is a logical protagonist in the monitoring process. The experience of the states in 1978 reinforces the suitability of the legislature as a monitoring mechanism because it demonstrates that not only can the legislature influence, guide or strengthen the existing machinery; it can intervene directly in the system through legislative enactment or through the exercise of independent or group influence.

the state legislature as monitor

The role of the state legislatures in the monitoring process is best evaluated by reviewing their participation to date. There are five identifiable ways in which state legislatures have contributed to the information gathering, evaluation, and dissemination systems within their states:

--by enacting substantively progressive legislation;

--by enacting legislation creating monitoring mechanisms;

--by funding administrative positions or agencies to accomplish monitoring goals;

--by creating a task force or study committee to evaluate the system, and provide feedback to the legislators and the public;

--by participating in a public process of legislative revision.

The enactment of substantive legislation is the legislature's most direct method of dealing with an exposed and acknowledged flaw in the system. The term substantive in this context should not be interpreted as excluding the expansion of the range of procedural rights due juveniles. According to the ABA standards, the primary responsibility for monitoring individual cases rests with the juvenile's counsel. The stage of the proceeding at which counsel is legislatively mandated may have more impact on the pre-adjudication detention rate than any other single factor. With respect to the goals mandated by the Juvenile Justice and Delinquency Prevention Act, the state legislature can directly address the deinstitutionalization and separation issues. In Massachusetts, the law limits custodial intervention for "children in need of services" to foster care, group care or temporary shelter care. The New Juvenile Act in Pennsylvania provides that after December 31, 1979, it will be unlawful for a jail employee or director to receive a person he should have reason to believe is a child (PA Stat. Chapt. 50). Regrettably, the 1978 monitoring reports indicated that the enactment of a law is not evidence of the desired result. However, the existence of these laws renders non-complying administrative officials vulnerable to legal proceedings and to citizen pressure. In Utah, where litigation is currently underway involving the Provo Canyon Boys Ranch, the memorandum of law submitted to the juvenile justice advisory group by the Juvenile Justice Legal Advocacy Project concludes that "in view of the clear prohibitions on confinement of juveniles in adult jails contained in state statutory law as well as federal civil rights law, it appears that local sheriffs and county commissioners, who are directly charged with custody and detention of arrested juveniles, are

If the ambiguity of the monitoring requirement in the Act evoked an anxious response from the state officials responsible for its implementation, they were not likely to find further guidance from allied professional groups. The Institute of Judicial Administration/American Bar Association Standards ratified by the ABA in February, 1979 address the issue most directly in their definition of monitoring as a "process of overseeing and examining the operations of the various components of the juvenile justice system." The standards generally describe the goals of monitoring as ensuring the protection of juveniles' rights; evaluating the fairness of programs and facilities; identifying alternatives to all forms of coercive intervention in juveniles' lives; gathering and disseminating information about the juvenile justice system to system officials or to the general public; and evaluating existing documentary information and data bases. The ABA standards do suggest specific monitoring mechanisms including attorneys, a state commission or juvenile advocacy group, community advisory councils, legislative committees, ombudsmen, private citizen groups, the courts, and internal monitoring within the agencies. The Office of Juvenile Justice supplied a technical aid which outlines the basic information which the states would be required to provide for fulfilling the reporting requirement of section 223(a)(4) of the Act.

Among juvenile justice system professionals, a theoretical distinction is often devised between monitoring as including the range of activities described in the ABA standards, and monitoring as strictly for compliance with the requirements of the JJDP Act. Monitoring for purposes broader than to assess the level of compliance with the Act would appear to extend into the planning process. The actual experiences of most system officials indicate, however, that the distinction is largely semantic. The information gathered on the number of status offenders held in secure facilities or juveniles confined in institutions with adults cannot help but raise and answer questions about the system at all levels, extending from police procedures, to the social services network, to the courts, to the funding sources, and to the general public. Therefore, the dilemma becomes selection of the most efficient and economical mechanism or combination of mechanisms for monitoring.

At the core of the monitoring process is the need for development of an effective data collection network, and a procedure for inspection and verification. With adequate resources, these functions could conceivably be performed solely by the state agency assigned monitoring responsibility; however, by involving a wider range of groups in the process, both the quality and the impact of the information gathered will be increased. The 1978 annual monitoring reports to the Office of Juvenile Justice and Delinquency Prevention indicate that efforts of the state agencies are currently being augmented by a variety of citizen and legal advocacy groups, charitable and professional organizations, and various components of the system itself, including the executive and judicial branches, and the law enforcement and child care segments. What was striking, however, when reviewing the reports was the major and diverse role that the state legislature has played in the monitoring process. Based on its authority, elective status, flexibility and presumably vested interest in a system which it has codified, the state legislature

Introduction

"One problem resulting from the complex structure of the entire juvenile justice system is that reliable information about the performance of the various components of the system as well as the methodology to evaluate such performance is unavailable to policymakers...In order to upgrade the allocation of resources and to increase accountability...there is a need to improve the mechanisms by which society monitors the treatment of children."[1]

The past decade witnessed an alarming increase in the number of juveniles arrested for the commission of serious crimes. State and local governments traditionally charged with the handling and treatment of juveniles in the criminal justice system met the increase in juvenile crime with a scarcity of resources and expertise. Congress responded to the shortages at the local level by enacting the Juvenile Justice and Delinquency Prevention Act of 1974. The Act provided for the disbursement of funds and technical assistance to the states contingent on the removal of status or non-offenders from secure facilities and the separation of children from adults incarcerated for commission of a crime. The federal legislation further required that the states "provide for an adequate system of monitoring jails, detention facilities, correctional facilities and non-secure facilities."

---

[1] Paul Nejelski and Judith LaPook, "Monitoring the Juvenile Justice System, How Can You Tell Where You're Going if You Don't Know Where You Are?" *American Criminal Law Review*, 12, No. 9 (1974), 9-31.

Contents

page 1 INTRODUCTION

11 OHIO: A REVIEW OF THE JUVENILE JUSTICE SYSTEM
—*James Burley*

37 THE OKLAHOMA JUVENILE JUSTICE SYSTEM: AN OVERVIEW
—*Barbara Bowman-Gatewood*

73 A REVIEW AND ANALYSIS OF THE JUVENILE COURT PROCESS IN ARIZONA
—*Martin Willett*

109 THE JUVENILE JUSTICE SYSTEM OF THE DISTRICT OF COLUMBIA: FLOW CHART AND ANALYSIS
—*Jonathan Fenton*

Acknowledgements

The case studies presented in this publication were completed with the enthusiastic supervision provided by the Legis 50 Model Juvenile Justice Committee staff in Arizona, Oklahoma, Louisiana, and Missouri (Beth Rosenberg, Michael Bernhard, Dan Lombardo, Alvin Stoll); the Ohio State Legislative Commission (Dave Johnston); and the Committee on Human Resources staff for the District of Columbia (Polly Rich). Special thanks go to Michael McMillen, Stephen Hargis, Sara Booker, and Barbara Sewell. Without their patience, good humor and professional expertise, the preparation of this report would not have been possible.

Foreword

The high level of legislative activity in the area of juvenile justice and delinquency prevention during the past five years has increasingly provided a foundation from which public officials and citizens alike can implement the deinstitutionalization mandates of the JJDP Act. While state legislation clearly serves as the cornerstone for change, the best intentioned legislation can be rendered meaningless if not monitored on a continuing basis.

Legislative Monitoring: Case Studies from the National Legislative Internship Program examines one of many mechanisms for monitoring juvenile legislation. A cooperative effort between the Community Research Forum and the Center for Legislative Improvement, the project utilized legal interns to work closely with appropriate juvenile justice legislative committees in Arizona, Louisiana, Missouri, Ohio, Oklahoma, and the District of Columbia. Each intern working under the supervision of a committee staff person, conducted a comparative analysis of the juvenile code vis-a-vis the recent standards promulgated by the IJA-ABA Juvenile Justice Standards Project. The intern then surveyed selected local jurisdictions to determine the extent to which the legislation was being implemented. Finally, the intern presented findings and recommendations to the legislative committee concerning its role in monitoring the legislation.

Beyond its intent to assist the legislative committees involved in the internship program the findings should provide important guidance for other states and territories concerned with monitoring legislation in there own areas.

Ira M. Schwartz
Administrator
Office of Juvenile Justice
and Delinquency Prevention

Legislative Monitoring:

Case Studies From The National Legislature Internship Program

PREPARED FOR
United States Department of Justice
Law Enforcement Assistance Administration
Office of Juvenile Justice and Delinquency Prevention

LEGISLATIVE INTERNS

Barbara Bowman-Gatewood
University of Oklahoma

James Burley
Ohio State University

Daniel Dunham
University of Missouri

Jonathan Fenton
Georgetown University

Henry King
Louisiana State University

Martin Willett
University of Arizona

Linda Abram
Internship Coordinator

This project was undertaken as a joint effort between the Community Research Forum of The University of Illinois and LEGIS 50 - The Center for Legislative Improvement and supported under grant no. 78-JS-AX-0046 awarded by the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, United States Department of Justice. Points of view or opinions stated in this document are those of the Community Research Forum and do not necessarily represent the official position of the U.S. Department of Justice.

COPYRIGHT 1980 © THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS

COMMUNITY RESEARCH FORUM
University of Illinois at Urbana-Champaign

December, 1979

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

best copy available

U. S. Department of Justice
Office of Juvenile Justice and Delinquency Prevention

Legislative Monitoring:

Case Studies From The National Legislature Internship Program

NEWARK PUBLIC LIBRARY
OCT 27 1980
U. S. GOVT. PUBS.
DEPOSITORY 376

Legislative Monitoring: Case Studies From The National Legislature Internship Program

J26.2:
L52

blank page

As further support to the protective procedures surrounding the detention decision, the interns recommend codification of periodic reviews of all children in custody.

implications for monitoring

The findings and recommendations which emerge from these case studies clearly indicate that there are areas in the juvenile justice systems of all of these states where legislative intent is not being fulfilled. This may be because it is unwieldy in the context of administrative realities, or it conflicts with administrative or judicial rules and policies, or perhaps because legislative intent was not communicated with sufficient specificity. In all these cases, however, the legislature has the power to amend the legislation and align actual practice with legislative intent. The legislature, by enacting legislation requiring additional constitutional safeguards, such as right to counsel, will in effect be delegating its monitoring responsibilities to private counsel. Similarly, the legislature can provide for more vigorous enforcement of detention criteria provisions by providing for more frequent reviews, or by incorporating civil or criminal penalties into the statute. The legislature's options are varied if it chooses to exercise them. This project, while creating controversy in some administrative and judicial quarters, has been successful in promoting exchange among system professionals, and in providing necessary information to legislators upon which to base further investigation of the juvenile justice system in their states.

appointed within 48 hours, this may be after a detention hearing has been held where the youth has had the opportunity to admit the allegations in a petition, without the advice of counsel. The operational assessment of the Ohio System showed that while the law provides for advisement of right to counsel, this may not in fact be accomplished, thereby resulting in a child remaining in custody longer than the statutorily prescribed 72 hours.

Reports from all the states reflect concern about intake diversion procedures; the absence of definite guidelines on who is eligible for diversion; at what stages intake can occur; and ambiguity where mechanisms are set up whether they are or were intended to be a prerequisite to the filing of a petition. The interns from both the District of Columbia and Ohio revealed possible inconsistencies in the application of detention criteria. In Ohio both the referees interviewed and the public defender stated that the detention criteria provided by state law were followed, however, a detention administrator estimated that up to 50 percent of the children detained would eventually be found not guilty and/or released to a nonsecure setting. These statistics clearly imply over-detention despite alleged adherence to legal criteria.

In D.C., there are several points in the process between police contact and disposition where statutorily designated decision-making points are replaced with "automatic" procedures. For example, detention criteria and other relevant considerations set out in the D.C. Code and the Juvenile Court Rules are to "govern the decisions of all persons responsible for determining whether detention or shelter care is warranted prior to the fact-finding hearing." In addition, a Police Department memorandum has been issued which lists criteria which are more general and less extensive than those in the Code or the Court Rules. Interviews with police officials revealed that in practice the decision to detain or release is based on three factors: nature of offense, prior record (if any), and whether a parent or relative can be located. If a parent, guardian, or close relative cannot be located the child will be detained regardless of the charge. This criterion for detention is noted by the D.C. intern as absent from all of the written detention criteria. Further, if the police officer completes the paperwork between 6:00 a.m. and 3:00 p.m. on weekdays, and before 10:30 a.m. on Saturdays and holidays, the child is always brought to court for a detention hearing, even if the charge is one for which release would be appropriate if court were not in session, and the decision was between release or detention at the Receiving Home. This procedure eliminates the initial detention/release decision (by police), in a system designed to include three points at which a child is subject to release pending the fact-finding hearing. Though this procedure speeds and guarantees the child's appearance in court, the conclusion is accurately drawn in the D.C. Report that even where a child benefits from an expedited initial hearing, he loses the benefit of having his detained status screened by the first of three independent persons prior to the fact-finding hearing. With respect to inexact application of criteria, the District of Columbia intern notes in his recommendations, "A judge should not be permitted to base his or her decision to detain a child upon a 'general sense impression' by paying lip service to the aforegoing criteria and applicable factors."

sulting in the secure detention of youth, and specifically, to address the time frames and decision-making points within the process.

The operational analysis was performed in one urban and one rural county (with the exception of the District of Columbia). The criteria provided for selection of a county were that the urban county should have a separate juvenile court and a county detention center. By contrast, the "rural" county would have a court of multiple jurisdiction which served as the juvenile court, and instead of a juvenile detention center would use the county jail to detain juveniles. The choice was further affected by geographical proximity and access to key personnel. Each intern was directed to analyze the operational system in each county in comparison to the codified procedures, and in comparison to national standards, principally the American Bar Association Standards. They were then asked to make recommendations on how the legislature might participate more effectively in the monitoring process, based on their view of where the statutory system was "breaking down" in practice. Suggested interview questions were provided as a general guide to the students; these are included in the appendices to several of the reports.

The project description applied by the Community Research Forum, therefore, was general enough so that the legislative staff members could focus on an area of particular interest to the respective state legislators, while tailoring the format of the report to ensure maximum exposure and impact on the committee. Four of the internship reports have been selected for reproduction below in essentially unaltered form.

In addition to varying in format, the final reports vary in the issues addressed; however, there are at least five areas where common concerns emerge and merit particular attention. These issues are the specification of time limits for filing a petition; proper advisement of the right to counsel prior to a detention hearing; formulation of a more exact definition of the intake diversion mechanism; substitution of discretion for specific criteria in detention decisions; and automatic periodic review of detention decisions. In Ohio, neither the statute nor the Juvenile Court Rules specify a particular time by which the complaint against a child taken into custody must be filed. In Arizona, there is no time limit in filing a petition for non-custodial cases, whereas in Louisiana the time limit for filing petitions in non-custodial cases varies among parishes. In contrast, the intern from the District of Columbia states that by requiring that a petitioning decision be made on the day of the detention hearing, the system creates the appearance that the reports of a detained child are being especially safeguarded. "In practice, however, such a requirement runs counter to the child's best interest because such time constraints make an informed petitioning decision impractical. The result is over-petitioning." (See the Juvenile Justice System of the District of Columbia, Flow Chart and Analysis, infra.)

Four of the analyses review the issue of strengthening the constitutional protection of right to counsel. The intern in Oklahoma recommended that the juvenile code be expanded to include an unwaiveable right to counsel, except before a judge and with counsel. Similarly, the Louisiana intern advocated that counsel be an unwaiveable right for youth charged with delinquency. Though the Arizona law provides that counsel be inghouse function by acting as information gatherer and disseminator. In this role, the legislatures have responded with the most creativity and flexibility, and have in the process laid the foundation for major juvenile code revisions. Monitoring in the juvenile justice area is a response to the fragmentation of the child care system. Communication among system components has been successfully accomplished with legislative aid in several states. During the 1978 legislative session in Georgia, a study committee was established to conduct a statewide review of all public and private child care facilities. The Committee worked with the Division of Youth Services in conducting on-site visits and meetings. The committee was created to assess the impact of Senate Bill 100, deinstitutionalization legislation enacted in 1978, to recommend needed changes for the start of the second year, and to sponsor legislation in the 1979 session.

The fifth way in which the legislature can play a role in the monitoring process is by involving the public in the process of legislative revision via a series of public hearings.

--In New Mexico, the Juvenile Justice Advisory Committee and members of the Supreme Court conducted a public hearing in each judicial district to inform the public and the juvenile justice system officials about the requirements of the New Mexico Children's Code, as well as the availability of state and federal funds to implement the requirements. The meeting was arranged through the presiding judge in each district.

the legislative internship program: the legislature, the juvenile code, the law students

The National Legislative Internship Program, conducted by the Community Research Forum of the University of Illinois at Urbana-Champaign, was designed in conjunction with the Model Committee Staff Project of LEGIS 50, The Center for Legislative Improvement, to increase the participation of young people in efforts to remove juveniles from adult jails and lockups, by involving them in direct consultation with legislators and state and local officials. The program was also developed to provide legislators with information on the operational aspects of the current juvenile code, thereby generating legislative interest and involvement in the monitoring process. Third-year law students were chosen from law schools in Arizona, Missouri, Louisiana, Ohio, Oklahoma and the District of Columbia. Project candidate approval was obtained from the legislative committee members. The interns and a member of the LEGIS 50 or juvenile justice committee staff from each of the states were required to attend a three-day training session at the University of Illinois. The concept of monitoring was introduced to the interns and defined with the committee staff members. The ten-week internship project was presented as requiring a "flow chart" of the state juvenile court system as codified from the point of initial contact to disposition. This statutory system review was to be followed by an empirical study of the system, consisting of data gathering and interviews with key juvenile justice officials. The interns were advised to be particularly sensitive to procedures re-

Services out-of-home placements to insure appropriate treatment services and the least restrictive placement.

--The Kentucky Juvenile Proceedings Article, as revised in 1978, provides for a fine from $100 to $500 or up to thirty days in jail for any person who violates the prohibition on the admission of juveniles to adult jails.

--The California Welfare and Institutions Code makes direct provisions for the inspection of jails and lockups annually by the juvenile court judge of each county and also by the Department of Youth Authority.

These statutorily created mechanisms are indicative of the wide variety of possible approaches by the legislature to monitoring. These laws, however, are subject to the same unevenness in enforcement as the procedures they were enacted to monitor. The Arkansas Criminal Detention Facilities Board has successfully executed its statutory responsibilities and through the process has closed several facilities. The "midnight rider" provision in Ohio, while providing for legislative involvement at the most direct level, is not yet operational. Similarly, there is no record to date of any county official being fined or imprisoned for admitting a court-ordered juvenile to a jail.

Perhaps the state legislature's most powerful and certainly its most familiar tool in redirecting state agency activities is through its funding power. This may consist of expanded funding to administrative agencies to increase their data collection or inspection capability, or to create new positions; or it may be through the provision of funds to a legal services organization. By creating and funding a monitoring mechanism, the legislature is increasing the likelihood that the desired goals will be accomplished. In addition to being financially endowed, the new project can be awarded the vicarious authority to inspect, to gather information, and to require compliance. Georgia reported that its monitoring efforts have been substantially improved since the Jail Monitor position was created in the Department of Human Resources Licensing Section. In Illinois, the Juvenile Monitoring and Information Project was funded primarily by an Illinois Law Enforcement Commission grant, and directed principally towards data collection; the provision of trained staff to assist all local law enforcement agencies and detention centers to monitor, record, and report the detention of juveniles; and the development and implementation of a computerized data collection system that supplies and disseminates data on the detention of juveniles.

An often-cited constraint to compliance with the mandates of section 223(a)(12)(13) of the JJDP Act is the lack of funding for alternatives to secure detention. In Pennsylvania, Act 148 provides a fiscal incentive for the use of community-based programs by making a larger amount of state funds available for these services. In addition, program guidelines developed for the use of Crime Control and JJDPA funds in Pennsylvania limit eligibility for funding to programs providing community-based services. This two-part funding plan enables the legislature to accomplish the desired deinstitutionalization objectives and to insert a control mechanism over the transfer of children to alternative placements.

The state legislature can also perform a clear-extremely vulnerable to state tort actions for damages as well as federal civil rights actions for damages and injunctive relief. It is likely that state and federal immunities would be held not to apply to such individuals.[2] The Community Advocate Unit-Youth Project in Pennsylvania successfully challenged a Pittsburgh zoning ordinance which allowed for inclusion in the neighborhood of an "institutional house" provided it was on five acres of land. The court held that the five acre requirement was unconstitutionally restrictive and also distinguished a group home from an institutional house.

--The court-watcher program conceived by the Alston Wilkes Society in South Carolina effectively mobilizes citizens in the enforcement effort through the formation of volunteer jail service committees. A member of this committee visits each county jail twice daily to check on the situation regarding juveniles, seeing if a child is confined with adults, or if a status offender is being held, the volunteer calls and reports the violation to the Youth Bureau. A Youth Bureau counselor is on duty 24 hours a day. This plan assures compliance with South Carolina law which provides that children be separated from adults.

The mobilization or effectiveness of advocacy activities may not be sufficient to ensure the realization of legislative content in a particular state; however, the legislature can exercise its option of codifying a monitoring mechanism to further assure administrative compliance with statutory mandates.

--In Arkansas, Act 244 of 1973, effective August 1, 1977, provides for the establishment of a Criminal Detention Facilities Board to develop and enforce jail standards. The Act details the Board's responsibilities and the procedures to be followed when a facility is found in noncompliance with the minimum standards. Specifically, the Act calls for annual inspections, written reports of findings, and authorization to the Board to petition a circuit court when violations are not corrected. The standards state that a juvenile may not be confined within physical sight or audible distance of adult offenders, i.e., sight and sound separation.

--Ohio House Bill 305 creates a Correctional Institution Inspection Committee of eight legislators having the authority to inspect all state and local correctional facilities at any time of the day or night.

--The Virginia Juvenile and Domestic Relations District Courts Law as revised includes a section providing for a Citizen Advisory Council to the judicial and administrative components of the Juvenile Justice System.

--New Jersey has implemented the Child Placement Review Act which mandates a court and citizen review of all Division of Youth and Family

---

[2] Juvenile Justice Legal Advocacy Project, Memorandum to Members of the Juvenile Justice and Delinquency Prevention Advisory Committee of the Utah Council on Criminal Justice Administration on Liability of Local and State Officials for Detention of Juveniles in Adult Jails.

Operational System-Analysis And Comparison With State Law

The two Ohio counties that were the focus of the project were selected primarily because they differ in three important ways. It was decided that one of the counties should be urban, have a separate juvenile court, and use a juvenile detention center. For contrast, the second county selected would be rural, its juvenile court a court of multiple jurisdiction, and instead of a juvenile detention center would use the county jail to detain juveniles. Other factors which were not of primary importance but which were taken into account in choosing the counties included geographic location, suggestions from persons familiar with the area of juvenile justice in Ohio, and contacts with key persons involved in the juvenile justice system in the particular counties selected.

The urban county chosen for this project was Franklin county. Franklin county is located near the geographic center of the state and has a population of approximately 850,000. Columbus, the state's second largest city with a population of roughly 600,000, serves as the county seat and state capital.

In conformity with project criteria, Franklin county does have a separate juvenile court and a juvenile detention center. In addition, the location of our office in Columbus and the existence of prior contacts with people involved in Franklin county's juvenile justice system made this county a logical choice.

Following interviews with a referee, public defender, assistant prosecutor, detention administrator, police captain, and intake supervisor, it can be said that the Franklin county system closely resembles the system created by the Ohio Revised Code and the Rules of Juvenile Procedure, and that in terms of according procedural protection of juveniles and complying with state law, Franklin county is reasonably sound. However, there are some problem areas which require attention.

An initial area of interest concerns the stage at which a complaint is filed. As stated earlier, Ohio law (R.C. section 2151.27) permits complaints to be filed by:

> *any person having knowledge of a child who appears to be juvenile traffic offender, delinquent, unruly, neglected, dependent, or abused.*

there is probable cause to believe the child committed an offense, J.R. 30 and R.C. section 2151.26 require that the child be at least 15 years of age and that the alleged offense would be a felony if committed by an adult.

Juvenile Rule 29 requires that the date for the adjudicatory hearing shall be set when the complaint is filed or "as soon thereafte as practicable." If a child is in detention or shelter care, J.R. 29 and R.C. section 2151.28 provide that the adjudicatory hearing "shall be held not later than ten days after the filing of the complaint." However, this ten-day limit is porcedural only, it does not give the child the right to have his case dismissed if he is not tried within the designated time. *In re Thorkildsen*, 54 O App 2d 175, 376 NE 2d 970.

Juvenile cases are adjudicated without a jury (J.R. 27, R.C. section 2151.35), and J.R. 29 requires the court to:

> *Determine the issues by proof beyond a reasonable doubt in juvenile traffic offense, delinquency, and unruly proceedings, by clear and convincing evidence in dependency, neglect, and child abuse proceedings, and by a preponderance of the evidence in all other cases.*

But here again the juvenile rules conflict with statute, as R.C. section 2151.35 would require proof by clear and convincing evidence in all these proceedings. Despite this conflict, the United States Supreme Court has made it clear that delinquency cases are to be adjudicated by proof beyond a reasonable doubt. *In re Winship*, 397 U.S. 358 (1970).

After the adjudicatory hearing, the court must enter its order, although J.R. 29(F)(2)(c) would permit the court to postpone entering its judgment of adjudication for up to six months. When entering its order, the court must dismiss the complaint if the allegations are not proved or admitted, and may dismiss even if they are. The court may also, pursuant to J.R. 29(F)(2)(b):

> *Enter an adjudication and continue the matter for disposition for not more than six months and may make appropriate temporary orders.*

Or, the court may enter an adjudication and proceed immediately to disposition. J.R. 29(F)(2)(a).

The length of time between the adjudicatory and dispositional hearings can vary, with an apparent maximum limit of six months under J.R. 29(F)(2)(b). Juvenile Rule 34 states that:

> *The dispositional hearing may be held immediately following the adjudicatory hearing or at a later time fixed by the court. Where the dispositional hearing is to be held immediately following the adjudicatory hearing, the court, upon the request of a party, shall continue the hearing for a reasonable time to enable the party to obtain or consult counsel.*

Ohio law does provide the right to counsel (and appointed counsel if indigent) at all stages of the proceedings (J.R. 4, R.C. section 2151.352) and it also limits the manner in which juveniles may be detained. Separation from adults is required, and distinction is made among the different types of juveniles that are adjudicated by the court.

because state law provides very little guidance on this matter it is unclear at what stage of the process diversion is to occur. Since many of the benefits of informal handling would be lost once the child appears in court, diversion was probably intended to occur prior to the detention hearing, and probably before a complaint is filed.

Once a complaint has been filed, if the child is already in custody, a decision as to detention or shelter care must be made by the intake or other authorized officer of the court, and again the requirements of J.R. 7(A) and R.C. section 2151.31 must be met. If a child is not already in custody the intake or other officer may be satisfied that the summons which is issued routinely by the clerk (J.R. 15(A)) upon the filing of a complaint is all that needs to be done. However, if it appears that the summons will be ineffectual, or if the welfare of the child requires that he be brought forthwith before the court, a warrant may be issued (J.R. 15(D)).

Pending hearing on the complaint, the court is empowered by J.R. 13 and R. C. section 2151.33 to make temporary dispositions or to order emergency medical and surgical treatment. Such action can be taken without a prior hearing(if a hearing is for some reason not possible) and the court apparently has this power whether the child is in custody or not.

If a child is placed in detention or shelter care, J.R. 7(F)(1) and R.C. section 2151.314 require that a detention hearing be held. But there is an important discrepancy between the statute and rule and once again the procedural-substantive controversy comes into view. Ohio Revised Code section 2151.314 provides that if a child is placed in detention or shelter care pursuant to R.C. section 2151.31:

> *a complaint under section 2151.27 of the Revised Code shall be filed and an informal detention hearing held promptly, not later than seventy-two hours after he is placed in detention.*

Juvenile Rule 7(F)(1) on the other hand provides that:

> *When a child has been admitted to detention or shelter care, a detention hearing shall be held promptly, not later than seventy-two hours after the child is placed in detention or shelter care or the next court day, whichever is earlier.*

Once a detention hearing is held, unless detention or shelter care is authorized under J.R. 7(A) or R.C. section 2151.31, the child should be released to his parent, guardian, or other custodian. Presumably, if a temporary disposition or order made by the court pursuant to J.R. 13 of R.C. section 2151.33, or a warrant issued pursuant to J.R. 15(D) or R.C. section 2151.30 result in a child being taken into custody, such child would also be entitled to a detention hearing under the language of J.R. 7(F) and R.C. section 2151.314

Children who are not in custody are not required by Ohio law to be given a detention hearing but as a practical matter some sort of preliminary hearing is usually provided.

In some cases the court may desire to transfer a child for prosecution as an adult. If so, in addition to a preliminary hearing to determine if at the time he is referred to the court intake unit. The chart uses law enforcement contact as an example of an instance where a child has been taken into custody before a complaint has actually been filed; e.g., a child who is arrested during the commission of a crime. But regardless of the circumstances under which a child is taken into custody, a person or agency taking such action is required by J.R. 7(B) to either release the child to his parent, guardian, or custodian; or, if one of the circumstances described in J.R. 7(A) is present, "to bring the child to the court or to deliver him to a place of detention or shelter care designated by the court."

Ohio Revised Code section 2151.311 differs somewhat from the corresponding juvenile rule. This statute, which is very much like J.R. 7(B) in prescribing conduct upon taking a child into custody, places a restriction upon the release alternative which is not present in J.R. 7(B). Instead of providing for the simple release of a child to his parent, guardian, or custodian, R.C. section 2151.311 provides for the release of the child "to his parents, guardian, or other custodian upon their written promise."

Juvenile Rule 7(A) permits a juvenile to be placed in detention or shelter care only when such action is required to:

> *Protect the person or property of others or those of the child, or the child may abscond or be removed from the jurisdiction of the court, or he has no parent, guardian, or custodian or other person able to provide supervision and care for him and return him to the court when required.*

Revised Code section 2151.31 contains almost identical language, but in addition permits placement of a child into detention or shelter care upon an order made by the court. The court in issuing such an order would presumably be limited by these standards also.

In any case, if a child is not released, R.C. section 2151.314 states that a complaint "shall be filed." Interestingly, Ohio law does not specify a particular time by which the complaint against a child taken into custody must be filed.

In Ohio, any person may file a complaint. Juvenile Rule 10 provides in part:

> *Any person having knowledge of a child who appears to be a juvenile traffic offender, delinquent, unruly, neglected, dependent, or abused may file a complaint.*

With this broad filing provision, one would expect the creation of a mechanism for screening or diverting those complaints that should not be formally handled by the court. Looking at R.C. section 2151.314 and J.R. 9 together, an intake and screening mechanism is described, but the precise nature of its operation is not specified. Ohio Revised Code section 2151.314 makes reference to an "intake or other authorized officer" and directs that upon the delivery of a child to the court or to a place of detention or shelter care such officer is to investigate the matter and release the child unless it appears that his detention or shelter care is required by other sections of the code.

Juvenile Rule 9 states a general court policy of resolving "appropriate cases" informally. But

The State System As Codified

The juvenile justice system in Ohio is not well defined by its law. Those features of the arrest to disposition process which are set out by law are found in statute (Ohio Revised Code, hereafter R.C.) and in rules of court procedure (Ohio Rules of Juvenile Procedure, hereafter J.R.). The rules were promulgated by the Ohio Supreme Court, and because they were not affirmatively disapproved by the General Assembly, they became effective on July 1, 1972 pursuant to Article IV, Section 5(B) of the Ohio Constitution.

The statutes and rules deal with many of the same issues and often use identical language, but they also conflict in some important respects. Which set of guidelines takes precedence is currently a matter in controversy, with judges generally taking the position that the rules supersede the statutes and the General Assembly arguing the reverse. The debate centers around Article IV, Section 5(B) of the Ohio Constitution which requires the Supreme Court to, "prescribe rules governing practice and procedure in all courts of the state" and further states that, "all laws in conflict with such rules shall be of no further force or effect after such rules have taken effect." But this section of the constitution also states that such rules "shall not abridge, enlarge or modify any substantive right." So here we are faced with the familiar legal question of whether a particular rule is procedural in nature or whether it has its basis in a substantive right.

If a rule is in fact procedural, it clearly will supersede statutes in conflict with it; if a rule is substantive though, and it conflicts with statute, the statute will control and the Supreme Court has exceeded its constitutional authority in promulgating it. Unfortunately, the controversy does not seem near to resolution.

So, with this unsteady beginning, and with the help of the attached flow chart, a description of the juvenile justice system prescribed by state law will be attempted. The flow chart does not reflect the entire juvenile justice process, but rather, for reasons of time, manageability, and interest, focuses on the time frame beginning with initial court contact and ending with the dispositional judgment. Particular attention has been paid to those routes often followed by juvenile cases, and to those phases of the system which are specifically governed in terms of time limits or decision-making guidelines.

Looking now to the chart, it should first be noted that a child may or may not be in custody

Introduction

The purpose of this project has been to observe the juvenile justice system as it operates in Ohio, to identify weaknesses in that system, and to suggest measures that can be taken to improve its functioning. To refer to "the Ohio juvenile justice system" is to suggest that there is in fact a uniform system which operates throughout the state. This of course is not the case--there may be as many "systems" as there are counties.

In light of the diversity of Ohio counties, two Ohio counties were observed, which differed in meaningful ways, so that the conclusions reached on their functionings could be useful in evaluating a variety of other counties. Accordingly, two counties were selected (based on criteria explained in part III), and key persons involved in the juvenile justice system in each county were interviewed. A flow chart representing procedure from the moment of court contact up to the dispositional hearing was then constructed indicating the juvenile justice system as it is described by state law and the changes in or modifications of that structure made by the individual counties. Comparison was then made of the operational systems with the system specified by state law, and of the state law system to the national standards suggested by the ABA and NAC.

Ohio: A Review Of The Juvenile Justice System

—James Burley

page 12 **Introduction**
13 **The State System As Codified**
17 **Operational System—Analysis & Comparison With State Law**
24 **Analysis of System—State Law vs. National Standards**
27 **Appendix: Interview Results With Commentary**

Analysis Of System-- State Law vs. National Standards

The ABA and NAC have looked into the area of juvenile justice quite carefully in recent years and they have a number of suggestions that could be helpful in alevtating some of the problems encountered in our look at the juvenile justice systems of Franklin and Clinton counties. Some of the problems could be remedied by strict adherence to state law as it stands now, but state law is vague in some areas and silent in others, and it is here that the ABA and NAC standards could be particularly useful.

In some respects current Ohio law is more strict than the proposed national standards. For example, J.R. 7(F) requires that a detention hearing for children taken into custody be held within seventy-two hours of the time a child is taken into custody, or the next court day, whichever is sooner. In many instances this would be sooner than would be required by the NAC standard, (NAC 3.161(6) which requires that the detention hearing be held within twenty-four hours after the child is taken into custody). ABA standard 6.5(D)(2) requires an intake official, upon his decision not to release a child, to file a petition for release hearing "no later than the next court session, or within twenty-four hours after the juvenile's arrival at the intake facility, whichever is sooner." Following the filing of this petition, ABA standard 7.6(A) would permit another twenty-four hour delay before the hearing is actually held.

Ohio law does not permit as much delay in holding the adjudicatory hearing for children in pre-trial detention as do the ABA and NAC standards. Ohio Revised Code section 2151.28 and J.R. 29 require that the adjudicatory hearing for children in detention be held within ten days of the filing of the complaint while ABA standard 7.10 (A)(1) and NAC standard 3.161 (f) would permit up to fifteen days of detention

As a result of this project, one problem has come into view which current Ohio law is not equipped to remedy, that is, the inappropriate detention of juveniles. The sheriff from Clinton county and the detention administrator from Franklin county both reported that they believed a substantial number of the juveniles detained in their facilities could be safely released into the community. This does not mean that the courts are not following state law; it may simply be the result of vague guidelines which permit broad discretion on the part of a particular decision-maker. For example, under Ohio law, a child may be detained if it is believed that he "may abscond" (J.R. 7(A), R.C. section 2151.31). The ABA standards would eliminate much of this

Another interesting difference, and one which is probably a consequence of county size, pertains to the tendency of people working together in the specialized area of juvenile justice to develop a working relationship in which the adversarial nature of the judicial process is diminished or lost, causing a decrease in its effectiveness. This phenomenon is much more likely to occur in a small county where there is only one juvenile court judge, one prosecutor who handles juvenile matters, and one public defender for juveniles, than in a county that has five times the positions and is much more likely to experience changes in personnel. Once a friendly working relationship does evolve, there is always the danger that an individual defendant's interests will become secondary to the preservation of the relationship.

person or property of others or those of the child," (J.R. 7(A)), but the practice of automatically detaining a particular type of accused offender does not permit the consideration of other circumstances which may be present, and thus seems to conflict with the juvenile court's purpose of according individualized treatment to juveniles.

Another factor the judge takes into account in making his detention decision is whether he believes the child committed the alleged offense. This of course is not among the justifications for detention provided by the code or rules, and unless the judge is using guilt as a means of measuring likelihood to abscond or danger to self or others, which are permissible criteria, he is in error. Guilt should be determined at the adjudicatory stage and may have no relationship whatsoever to the need to detain.

The sheriff stated that he believes the judge is detaining a substantial number of children unnecessarily. The judge's apparent broadening of detention criteria which already permit considerable discretion seems to support the claim.

Unlike Franklin county which does not securely detain status offenders, Clinton county does at times hold such children in the county jail. The judge stated that he believes such action is sometimes necessary for the protection of the child and that the status offenders detained are usually runaways.

Clinton county may be having problems complying with R.C. section 2151.28 and J.R. 29 which require that the adjudicatory hearing for children in detention be held within ten days following the filing of the complaint. Three of the people interviewed, the judge, prosecutor, and probation officer indicated that this time limit is not being met.

A related problem, or perhaps what would be better described as a potential problem, pertains to the manner in which this time period is calculated. The time period begins to run with the filing of the complaint, and since complaints cannot be filed after courthouse hours in Clinton county, and because state law does not specify a time by which complaints must be filed upon taking a child into custody, it would be possible to manipulate the time limit simply by delaying the filing of the complaint.

There is no reason to believe that this loophole is used by Clinton county authorities; in fact, there is ever indication that complaints in Clinton county are filed as promptly as possible, considering courthouse laws. But it should be recognized that the potential for abuse exists here and in other counties.

There were some interesting contrasts between Clinton and Franklin counties that were not raised in our discussion of the operational and state systems. One particularly noticeable difference concerned the apparent lack of knowledge of the law applicable to juvenile justice displayed by the people interviewed in Clinton county; particularly the judge, public defender, and assistant prosecutor. On the other hand, the referee, public defender, and assistant prosecutor in Franklin county seemed quite familiar with the law governing juvenile matters. This difference is probably due to the part-time nature of juvenile work in Clinton county.

delinquent, unruly, neglected, dependent, or abused.

No distinction is made between the filing of misdemeanor or felony complaints. However, Clinton county does make such a distinction. In Clinton county, complaints that allege offenses which would be misdemeanors if committed by an adult need not be filed by anyone, but complaints which allege offenses which would be felonies if committed by an adult must be filed by the prosecutor. Some prosecutorial control over the filing decision may be desirable in that it might serve a screening function. But the less serious offenses are generally the ones appropriate for screening, and the prosecutor in Clinton county exercises no control over these.

Another significant difference between the Clinton county system and the system created by state law concerns the lack of intake diversion mechanism by which those cases which would be better handled informally can avoid going before the judge. This may be the most serious deficiency in the Clinton county juvenile justice system.

State law does not mandate the creation of an intake screening office, but it does clearly state a preference for the informal resolution of "appropriate cases" (J.R. 9). The absence of an intake diversion mechanism may be the result of insufficient financial resources, but it would seem reasonable to assume that the additional cost of providing such a mechanism would be set off at least in part by the court time it would save, not to mention the long term benefits to the child who avoids an adjudication.

Once a child is taken into custody, state law requires that a detention hearing be held within seventy-two hours (or perhaps by the next court day, depending on which source of law is consulted). Based on the responses of several of the people interviewed, it can be said that Clinton county usually meets the seventy-two hour limit but that there are occasions when it does not. Since juvenile court is held only on Tuesdays and Thursdays, it is easy to see that a child taken into custody on a Thursday evening would probably not receive his detention hearing until the following Tuesday, 96 or more hours after being taken into custody.

In making his pre-trial detention decisions, the judge should follow the three detention criteria provided by the code and rules. Under R.C. section 2151.31 and J.R. 7(A) a child should not be detained unless he is likely to abscond or to be removed from the jurisdiction of the court; there is danger to the person or property of others or to that of the child; or there is not one available to provide care and supervision for him and see that he is returned to the court when requested.

The public defender and prosecutor both indicated that the judge follows these detention guidelines, but it later became apparent that the judge had made some modifications in the law. Despite her statement that the judge follows the detention criteria set out by law, the public defender went on to say that there are some classes of cases which will automatically result in detention, i.e., any case involving a firearm. This particular policy may make sense in that it could simply be another way of expressing one of the statutory criteria - "to protect the

If a juvenile is to be bound over for criminal prosecution, the Franklin county juvenile court requires that two hearings be held. A hearing is first held to determine if there is probable cause to believe the child committed the alleged offense; and a second hearing is held to establish that the child is over fifteen, that the offense alleged is one that would be a felony if committed by an adult, that he is not amenable to care or rehabilitation in a facility designed for delinquent children, and the safety of the community requires it. The matters to be addressed in these hearings are mandated by state law (R.C. 2151.26, J.R. 30), but state law does not require that they be resolved in two separate hearings.

The adjudicatory hearing for children in pretrial detention is reportedly always held within ten days after the filing of the complaint as required by law (R.C. section 2151.28, J.R. 29 (A)). This period may be extended if a party requests a continuance. Following adjudication the dispositional hearing is usually scheduled for the following week, after which an order will usually be entered immediately.

The procedural due process accorded to juveniles who enter the Franklin county juvenile justice system received high marks from the public defender interviewed. Most of her criticism was reserved for the post-disposition or rehabilitation end of the process, a phase that was beyond the scope of this project. She commended the rest of the system though, saying that most of Ohio's counties are working to reach the level that Franklin county has already attained.

Clinton county was selected as the rural county for this project. In accordance with project criteria, Clinton county's juvenile court is actually a court of multiple jurisdiction, and because a juvenile detention center is not available, the county is one in which a jail is used to detain juveniles. Also contributing to this particular choice of counties was input from a worker at the Office of Criminal Justice Services who was familiar with Clinton county and was able to assist us in contacting the key people in Clinton county's juvenile justice system.

Clinton county has a population of less than 35,000 and its county seat, Wilmington, with only 10,000 inhabitants, is the only community in the county that has reached city stature; that is, Wilmington is the only city in the county with a population of 5,000 or more. Clinton county is at least one county removed from any major metropolitan area.

Most of the key juvenile justice figures in Clinton county spend only a portion of their work weeks dealing with juvenile matters. The judge, for example, is also the probate court judge and juvenile court is open only on Tuesdays and Thursdays. The assistant prosecutor has a private practice, as does the public defender. Interviews were arranged with these people and with a probation officer (who also served as bailiff) and the county sheriff. Our conclusion following these interviews is that the juvenile justice system in Clinton county significantly differs with the system created by state law.

These differences begin as early as the filing stage. State law permits a complaint to be filed by:

> *any person having knowledge of a child who appears to be a juvenile traffic offender,*

for the detention hearing. The referee at that time will see to it that the child receives representation if he so desires and the detention hearing will probably be rescheduled for the following day. As a result of this inefficiency the child will have to spend another day in detention before he effectively receives a detention hearing. It should be noted that no indication was given the people interviewed that this situation occurs frequently. It may be that the child or his parents' indecision is the cause of the delay. If a child does come to his detention hearing without the benefit of counsel, the public defender interviewed stated that the referees do adequately advise children of their rights, and see to it that a child who desires counsel is provided with an attorney or is given the opportunity to obtain one. It is probably due to the referees' care in advising juveniles of their rights that the percentage of juveniles represented by counsel was estimated to be rather high (at least compared to the rural county) by all the people interviewed.

Almost all the juvenile cases in Franklin county are handled by the five referees who work under the guidelines set down by the judge. However, except for the Revised Code and the Juvenile Rules, there is no uniform written basis upon which their decisions are made. The public defender did complain about the lack of consistency among the referees.

One of this court's unwritten policies concerns status offenders. Franklin county may be unique among Ohio counties in that it does not securely detain status offenders. Although some of the people interviewed disagreed with the referee's statement that such children are never detained, all agreed that such action is extremely uncommon. The juvenile court also refrains from placing such children on probation, making it difficult for them to come delinquent for violating an order of the court pursuant to R.C. section 2151.02(B).

At the detention hearing in Franklin county four things are done: the child is advised of his rights and counsel is appointed if requested; a determination is made whether there is probable cause to believe that the child committed the offense alleged; a plea is taken; and a detention decision is made. The public defender interviewed stated that the referees do adequately advise children of their rights and do follow the detention criteria provided by state law. Interestingly, a detention administrator estimated that from 60 - 70% of the children detained could be safely released to a supervised nonsecure setting, and that up to 50% of the children detained would eventually be found guilty and/or released to a nonsecure setting. It is puzzling how such a large number of children who arguably should not be in detention can be ordered detained while at the same time the referees are following the detention criteria provided by law.

When children are detained in Franklin county they are usually placed in the juvenile detention home located in the same building as the juvenile court. This facility provides educational, recreational, and counseling programs; medical care is available as well. On occasion though, the court does use the county jail for detention. This course of action is reserved for those children who are older and larger than most, and who would present a security problem if kept at the detention home -- these children are separated from adult prisoners at the county jail.

This broad filing provision may be causing some problems in that it may at times interfere with attempts by the juvenile court intake workers to divert some types of cases away from formal court action. In observance of the general policy set forth in J.R. 9, Franklin county does attempt to resolve appropriate cases informally, but because the intake workers have no real control over the decision to file a complaint, a complainant can resist such efforts. By denying intake workers and prosecutors control over the filing decision, Ohio law prevents the intake worker from exercising his expertise, causes unnecessary stress to children and parents, and in many instances leaves the prosecutor with weak, legally insufficient complaints.

Franklin county juvenile court has not drafted written guidelines for the operation of its intake diversion mechanism, nor have such guidelines been provided by state law. Rather, diversion policy is made by the chief referee who is in turn, along with the four other juvenile court referees, supervised by a judge of the domestic relations division of the Court of Common Pleas.

Current intake policy favors informal handling of the less serious offenses, especially first offenses. But children brought in by the police are not diverted, nor are children who are accused of offenses which would be felonies if committed by an adult. This practice of what appears to be automatic nonintervention in certain classes of cases seems to conflict with the juvenile courts' purpose of according individualized attention to juveniles. Nondiversion of felonies is no doubt an attempt to distinguish serious and nonserious offenses. Unfortunately though, the misdemeanor-felony distinction is a poor means of accomplishing this. In Ohio, for example, the theft of property worth $149 would be a misdemeanor while the theft of property worth $151 would be a felony. The policy of not diverting cases referred by the police, an intake worker explained, results from the belief that the police are experienced in screening cases. This is undoubtedly true, but it seems likely that the intake workers would have greater expertise.

Complaints cannot be filed with the juvenile court twenty-four hours a day, seven days a week. However, the court has made an arrangement with the city police so that if a child is taken into custody after court hours and requires detention, a complaint can be taken by the police.

If a complaint has been filed and a child has been taken into custody, Ohio law requires that such child be given a detention hearing at least within seventy-two hours, perhaps even the next court day, depending on whether one looks to R.C. section 2151.31.4 or J.R. 7(F). There has been general agreement among those interviewed that Franklin county holds these hearings at least within seventy-two hours and in many instances within twenty-four hours. However, it is arguable that some children are really not receiving their detention hearings within the required period. For example, a child may be taken into custody on a Friday after court hours. The court is not open on weekends, so the child would not be scheduled to appear before the referee until the following Monday -- a period within the seventy-two hour limit. But, if prior to the detention hearing the child has not been able to retain private counsel or he has not been adequately advised of his right to appointed counsel, in all likelihood he will be unprepared youth advocate from local community action program.

3. What kinds of kids do you handle?

Franklin: All kinds.

Clinton: Primarily delinquents. She says is technically not supposed to handle unrulies but does on occasion. Does not handle dependent/neglected kids.

4. Are kids already in detention when defense counsel is contacted? For how long?

Franklin: Sometimes. Probably no more than 24 hours unless on weekends.

Clinton: Yes. Especially if kid is going to be detained until trial. Usually child will not be detained for more than 72 hours before counsel is contacted.

5. If kids are already in detention when they first contact counsel, have they been before a judge (or referee)?

Franklin: Sometimes. If counsel is appointed at the detention hearing, obviously the child has been before a judge. Once counsel is appointed, another preliminary hearing will be held the next day.

Clinton: Sometimes.

6. Where are they detained?

Franklin: Detention home, usually.

Clinton: Jail.

7. Are status offenders or dependent/neglected kids securely detained?

Franklin: No. Not unless very special circumstances, e.g., a repeated runaway. Dependency/neglect children are never securely detained.

Clinton: Runaways usually are; incorrigibles are. Dependency/neglect are not.

8. Are the kids adequately advised of their rights?

Franklin: Yes

Clinton: Yes

9. What factors seem to influence the judge's decision at the detention hearing?

Franklin: Whether the child is under the control of his parents, whether the child is likely to make himself available for trial, whether child is dangerous to himself or the community -- Says that the referees do follow the rules and statutes.

Clinton: Says judge follows the rules and statutes, but added that he automatically holds kids who have allegedly used a firearm.

10. What factors influence the judge's decision at disposition?

Clinton: Seriousness.

11. Are the court's decisions consistent?

Franklin: No. Outcome many times depends upon which referee you get.

with their parents'.

Clinton: For felonies, 90%. For others, has no idea.

10. Do procedures tend to be different with kids not represented by counsel?

Franklin: Court sometimes takes more active role to protect kids.

Clinton: Does not know. Says that he is not in court unless the defendant is represented by counsel.

11. Is a kid likely to be in custody before a petition is filed?

Franklin: Sometimes, but rarely longer than a few hours. Usually, petition filed at the same time booked.

Clinton: Sometimes, since court is closed on weekends and petitions must be filed there.

12. How much time elapses between arrest and the detention hearing?

Clinton: Usually not more than 72 hours, if not the next day.

13. How much time elapses between the detention hearing and the adjudicatory hearing?

Clinton: About 20 days. Probably sooner if detained.

14. How long from adjudication to disposition?

Clinton: Seventy-five per cent of the time disposition will follow immediately. Sometimes there will be a one-week delay.

15. If a prosecutor decides not to file (prosecutor files all felony charges in Clinton County), and the child is diverted, can the prosecutor change his mind?

Clinton: He doesn't think so -- it has never happened in his experience.

16. Can a complaining witness appeal the prosecutor's decision not to file?

Clinton: Doesn't know.

17. Are status offenders securely detained?

Clinton: Only if child is an out-of-state runaway.

defense counsel (public defender)

1. At what stage is your first contact with the child?

Franklin: Depends on when requested or appointed. Usually at preliminary (Detention) hearing stage.

Clinton: Usually not until after first appearance, sometimes earlier if a serious offense.

2. Who makes the contact?

Franklin: The court, client.

Clinton: The court, client, parents, sometimes a

prosecutor

1. Do you just handle juvenile matters?

Franklin: Yes

Clinton: No. Also has private practice.

2. What is prosecutor's first contact with the case?

Franklin: After complaint is filed, detention hearing held, and a not guilty plea is entered. If child is being bound over for trial as an adult, first contact will occur at the preliminary hearing.

Clinton: If a felony, prosecutor makes the decision to file the complaint. On misdemeanors, contact after not guilty plea entered at the detention hearing.

3. What mechanism is there for screening out those cases which you feel should not be filed?

Franklin: Prosecutors do not do the filing. There are intake referees which try to screen out the less serious offenses, but if a complainant insists on filing, a complaint will be filed. The prosecutor may then decide not to go forward with a case, but the complainant may then object to the court and the court may go forward.

Clinton: No mechanism.

4. Is there any contact with parents?

Franklin: Usually not, unless the kid is unrepresented by counsel, in which case the prosecutor may suggest that counsel be obtained.

Clinton: No.

5. Is there plea bargaining?

Franklin: Yes

Clinton: Very little.

6. Is there plea bargaining if a guilty plea has been entered?

Franklin: No

Clinton: No

7. What is the scope of the investigation done by the prosecutor?

Franklin: They try to contact as many people as possible, have a victim-witness program, have two investigators.

Clinton: None. Only what police tell them.

8. What role does the prosecutor play during the post-adjudication, predisposition stage?

Franklin: Not much, unless extenuating circumstances.

Clinton: Very little.

9. What percentage of kids are represented by counsel?

Franklin: For felonies, over 90% at trial. For misdemeanors, 75-85%. Status offenders are always represented since their interests conflict

Clinton: For lock-up, within 72 hours. For non lock-ups, two or three weeks.

7. How much time elapses between the detention hearing and the adjudicatory hearing?

Franklin: If detained, 10 days at most. If not detained, two to three weeks.

Clinton: Two to three weeks. Judge could not break it down into lock-up and non lock-ups.

8. How much time elapses between adjudication and disposition?

Franklin: One week.

Clinton: Usually immediate.

9. Is a child ever placed in jail? Under what circumstances?

Franklin: Yes, to serve sentences, if close to 18 years old, if extra large, if present a discipline or security problem in the detention home.

Clinton: Yes, to serve sentences, awaiting trial.

10. What is the scope of the pre-disposition investigation?

Franklin: School report, interview with parents and other interested parties, other involved agencies, psychological evaluation if needed or requested, interview with child, police report.

Clinton: Past record, social history, school progress, physical or psychological exams if necessary, probation officer's recommendation.

11. What factors affect disposition?

Franklin: Seriousness, past record, parents' ability to control and give support, child's ability to function in community, attitude, school record, truthfulness, community need for safety.

Clinton: Roughly, the same criteria as above.

12. If more than one judge, is there a uniform basis for decision making?

Franklin: Yes. A judge sets policy, guidelines for four referees.

Clinton: Only one judge.

13. What percentage of children are represented by counsel?

Franklin: Over 50%. Of those that go to trial, 85-90%.

Clinton: Of delinquents, 30-40%. Of status offenders, less than 10% represented.

14. What effect does representation have on the proceedings?

Franklin: Positive, especially in finding appropriate dispositions.

Clinton: Makes proceedings more formal.

Appendix: Interview Results With Commentary

judge/referee

1. What is the average time which elapses between arrest and first court appearances?

Franklin County Juvenile Court Referee: For lock-ups, one day. For non lock-ups, one to seven days.

Clinton County Judge: If detained, within 72 hours. If not detained, variable, two to three weeks unless a continuance is requested.

2. Are status offenders or abused/neglected children ever placed in secure detention?

Franklin: No. It is the policy of this court not to securely detain these kids. This county is probably unique in Ohio.

Clinton: Yes (as to status offenders), for their own protection, the judge says. He seemed defensive on this point, complained about some recent newspaper criticism.

3. What factors does the judge take into consideration when making a decision about pre-trial detention?

Franklin: Parents' guarantee, ability to control child, past performance, seriousness of offense, danger to child or community.

Clinton: Safety of child and community, seriousness of offense, whether or not child is guilty (though judge quickly added that he does not prejudge the cases).

4. What alternatives are available at the detention hearing?

Franklin: Detention, Franklin County Children Services, release, house arrest.

Clinton: Detention, release, house arrest.

5. What kind of information is available to you?

Franklin: past record and what is presented in court.

6. How much time elapses between arrest and the detention hearing?

Franklin: For lock-ups, one day, unless arrested on weekend. For non lock-ups, one to seven days.

the judge must appoint counsel.

Unlike Ohio law, ABA standard 9.1 and NAC standards 3.161 (d) and (e) suggest that the prosecutor should have some control over the filing of all complaints. A change of this nature could save court time by screening out legally insufficient or otherwise inapppropriate cases.

The adoption of the proposed national standards could bring great improvements to the area of juvenile justice in Ohio. But even if they are adopted by the legislature, problems will remain. In those areas where new legislation conflicts with the juvenile rules, an answer to the question of whether portions of the Ohio Rules of Juvenile Procedure are unconstitutional because they deal with substantive rather than procedural matters is still needed -- new legislation will be of little use if it is going to be ignored by Ohio's courts.

vagueness by using specific, concrete, readily identifiable facts about the child. ABA standard 5.6 (B) would require an arresting officer to release a child unless clear and convincing evidence demonstrates:

1. that the arrest was made while the juvenile was in a fugitive status;
2. that the juvenile has a recent record of willful failure to appear at juvenile proceedings;
3. that the juvenile is charged with a crime of violence which in the case of an adult, would be punishable by a sentence of one year or more, and is already under the jurisdiction of a juvenile court by way of interim release in a criminal case, or probation or parole under a prior adjudication. In addition, ABA 5.6(A) would mandate release of juveniles arrested for offenses which if committed by an adult would be punishable by a sentence of less than one year, unless the child needs emergency medical treatment, if known to be in a fugitive status, or requests protective custody.

Equally rigid standards are imposed on other persons who will be making a detention decision -- the intake worker, the judge or referee; so that if a child is inapppropriately detained by the police it is much more likely that he will subsequently be released. Even if a decision to detain a juvenile is made at the release hearing, the ABA standards (7.9) provide an additional safeguard by requiring the court to hold a detention review hearing "at or before the end of each seven day period in which a juvenile remains in interim detention."

In Ohio, the decision to place a child in detention or shelter care is often based upon the criteria that the child "has no parent, guardian, custodian, or other person able to provide supervision and care for him and return him to the court when required." (J.R. 7 (A)). Under the ABA standards 5.7, 6.7 and 7.7, protective detention would not be permitted without the consent of the juvenile.

The standards suggested by the ABA, providing for the creation of a statewide agency which would have the responsibility for the coordination and review of all release and detention programs for accused juveniles, would fill a serious gap in Ohio law and would improve the functioning of both counties studied. Clinton county has no intake diversion mechanism, and Franklin county, while having one, does not have written guidelines for its operation. The ABA standards would provide consistency in diversion practices within a county and throughout the state. Such guidelines would end the Franklin county policy of automatic nondiversion in cases referred by the police, or in cases which would be felonies if committed by an adult, since such practices would be in direct conflict with ABA standard 6.6 (B) which states, "no category of alleged conduct or background in and of itself should justify a failure to exercise discretion to release," and standard 5.4 which states that "the observations and recommendations of the police concerning the appropriate interim status of the arrested juvenile should be solicited by the intake official, but should not be determinative of the juvenile's interim status."

The ABA standards, particularly 6.5 (C) might also increase the percentage of children represented by counsel, especially in Clinton county where representation is not frequent, and may reduce the delay in proceedings that occurs when

Overview

The Oklahoma statutes have contained provisions concerning the treatment of juveniles ever since statehood. The one philosophy which has remained consistent over the years has been that juveniles are not to be treated as criminals. They are above all else children.[1]

In 1969, following on the heels of the Gault[2] and Kent[3] decisions and a massive court reform,[4] a complete revision of the Children's Code was enacted in which most of the principles of due process were extended to juveniles.[5] In addition, detailed procedures for handling juveniles in the newly organized court system were set forth.[6] Since 1969, the Children's Code has been amended almost yearly, each amendment reflecting a trend toward making the juvenile system less subject to arbitrary decision-making,[7] extending to the juvenile more procedural safeguards,[8] and providing for treatment outside the judicial system.[9]

The bulk of the Children's Code is found in Sections 601-1506 of Title 10, dealing with Juvenile Justice and Delinquency Prevention Services,[10] and with Delinquent, Dependent and Neglected Children.[11] These sections of the Code prescribe the procedure to be followed in handling delinquent children,[12] children in need of supervision,[13] and deprived children.[14] Statutory procedure for processing a child through the judicial system is generally the same for all three categories of juveniles. The basic differences are in custodial treatment[15] and in dispositional alternatives.[16] For example, if a child is taken into custody, a petition must be filed within five days or the child must be released to the parents, guardian or legal custodian. If the petition alleges cruelty on the part of the parents, the five day limit will not require the child to be released to those parents, and a petition must be filed within a reasonable time. In addition, a child who is taken into custody as a child in need of supervision may not be placed in a detention facility. Dispositional alternatives are laid out in the accompanying chart which illustrates the highlights of the Oklahoma Juvenile Justice System. (Appendix A.)

Statutory procedures are uniformly applicable throughout the state. These procedures include: intake, petition, adjudicatory hearing, waiver (certification to adult court) and dispositional hearing, among others. A child who is taken into custody and placed in detention (defined as a "secure, correctional facility")[17] receives a detention hearing within the next judicial day.

The Oklahoma Juvenile Justice System:

An Overview

–Barbara Bowman-Gatewood

page 38 Overview
44 Oklahoma Children's Code In Operation
48 American Bar Association Standards
50 Federal Laws
51 Recommendations
59 Conclusion
60 Footnotes
63 Appendix A
68 Appendix B

comments -- clinton county

Public defender -- Elaine Biehl

Ms. Biehl was quite cooperative and seemed quite willing to take the time to discuss every phase of Clinton county's system. She was not critical in her evaluation of the judge, assistant prosecutor, or sheriff. She seemed to hold the judge in particularly high esteem, something I found quite puzzling once I had met with him. I did have some doubts about her legal expertise when she failed to make reference to a particulary well-known law. She also appeared to take a "best interests of the child" role rather than one of advocacy -- a characteristic which is probably common to the smaller counties.

Assistant Prosecutor - Bill McCracken

This man was not uncooperative, but he was not helpful either. He was not at his office when I arrived for our appointment. By a stroke of luck he happened to phone his secretary while I was there and she reminded him of our meeting. Even after his apologies for his late arrival, he gave the impression that he had many more important things to be doing with his time. He was unable to answer many of the procedural questions because he does not come into contact with a case unless and until a not guilty plea is entered. For the same reason he was not able to estimate the number of juveniles represented by counsel at various stages in the proceedings.

Judge -- Thomas W. Sprinkle

Judge Sprinkle was quite willing to discuss juvenile justice. He was not very diplomatic though -- he said many surprising things which I don't think were meant to be taken seriously, but I am not sure. For example, he suggested that public flogging be revived as a form of punishment. Normally I would dismiss that type of comment out of hand, but he also mentioned that he had recently ordered a runaway being held at the county jail to be bound and gagged to prevent her from disturbing the peace with her screams. That particular incident seemed to be a sore spot with the judge since he referred to some newspaper coverage that had criticized his action.

The judge did not impress me with his scholarship. Like the public defender and assistant prosecutor, he did not display the knowledge of Ohio law that I had expected. Perhaps this is not a fair comment, especially in view of my limited contact with these people, but I did have my discussions with the people in Franklin county upon which to base my comparisons. The judge also seemed to have nothing but contempt for the Ohio Youth Commission and the General Assembly. He seemed to think he could stop juvenile crime in a matter of weeks if he was permitted to.

Sheriff -- Dallas Kratzer

The sheriff was by far the most pleasant person I spoke with in Clinton County. He wasted no time in pointing out his differences with the judge. In his view, the judge is much too harsh in his treatment of juveniles and holds many of them unnecessarily in the county jail. He does not feel the judge is qualified for his position and also expressed his disrespect for the assistant prosecutor (the judge earlier stated that the assistant prosecutor was too lazy and was not doing a good job).

10. Are status offenders ever securely detained?

- No.

11. If kids are diverted, can they be brought back on the original charge at a later date?

- No.

12. Is your office on call 24 hours a day?

- No, intake office open 8 hours a day.

13. Is every child interviewed in person before a detention decision is made?

- Yes. If not here, at least by police.

14. Do police always contact you immediately after a child is arrested and/or detained?

- Not always. Police have some expertise too, do some screening of their own.

probation officer

(clinton county probation officer, bailiff)

1. What kinds of kids do you deal with?

- Mostly delinquents.

2. If one of your kids is taken into custody, are you informed immediately?

- Yes.

3. What is your role in the proceeding?

- Probation officer may be the complainant. In other cases the judge may ask him for a recommendation.

4. What are the judge's disposition alternatives?

- Jail, fine, committment to the Ohio Youth Commission, license suspension if a traffic offender.

5. How much time elapses from the time a child is taken into custody and his detention hearing?

- Less than 72 hours unless on a weekend.

6. How long between detention hearing and adjudicatory hearing?

- About 3 weeks.

7. What percentage of kids are represented by counsel?

- 30-40%.

8. Is your office on call 24 hours a day?

- Office is not, but he is.

9. Is there an adequate number of probation officers?

- Yes, but could use more.

4. What is the average stay of post-adjudicatory kids?

-If have been permanently committed to the Ohio Youth Commission, about one week.

5. Are kids ever kept in the detention home for lack of space in other facilities?

-Yes, but not often.

6. What percentage of kids could safely be released to a supervised nonsecure setting?

- 60-70%.

7. What percentage of kids are eventually found guilty and/or released to a nonsecure setting?

- 50%.

8. Are educational, recreational, and counseling programs available in the detention home?

- Yes.

court worker

(franklin county, intake supervisor)

1. What kinds of kids are brought to you?

- All kinds.

2. What are the alternatives for each kind of kid?

- For unruly, delinquent, and pre-delinquent kids, may deal with the matter in an office conference, may refer to another agency, or may not be able to divert the matter at all.

3. What criteria are used in making a diversion decision?

- If the matter is a felony, it definitely goes into the system. If it is a misdemeanor, informal handling may be attempted, especially if it is a first offense. The intake referees follow the policies set out by the chief court referee.

4. What is the average time which elapses before a detention hearing?

- For lock-ups, 24 hours, unless on a weekend.

5. Who conducts the detention hearings?

- One of the court referees.

6. How often are children represented by counsel at detention and other court hearings?

- Always.

7. What is the scope of investigation?

- Depends on the case.

8. Is a recommendation made to the prosecutor?

- No. Prosecutor does not get the case until a not guilty plea is entered on the charge.

9. Do some children get securely detained for lack of nonsecure placement alternatives?

- Yes, that is one of the criteria for detention.

detention rooms while parents are being contacted and transportation is being arranged.

Clinton: Sheriff's office and county jail are in same building.

4. Are there written criteria for diversion?

Franklin: Just have standard operating procedure.

Clinton: No. But do have a written list of detention guidelines -- Kids arrested for certain crimes are "automatic holds." This list is not really designed to give diversion guidance, although it is not entirely unrelated.

5. When are kids advised of their right to counsel?

Franklin: upon arrest. Rights are read from a card.

Clinton: Immediately. Rights are read, child asked to initial, sign in various place.

6. Is a written waiver required?

Franklin: Not normally, but may use one for vey serious offenses.

Clinton: Not unless the signing of the Miranda rights operates as a waiver. Do not use a separate waiver form.

7. Are parents advised?

Franklin: Yes, as soon as possible.

Clinton: Yes, as soon as possible.

8. Where is child taken after police station?

Franklin: To juvenile court intake office.

Clinton: If not released to parents will keep the child at the county jail.

9. How long does it take for police to contact the court after arresting a child?

Franklin: Not long. Juvenile court open 24 hours.

Clinton: Normally court is contacted the next day, especially if the child is in custody. If not in custody, 4 to 5 days.

detention administrator

(franklin county only, since no detention home in clinton county)

1. What kinds of kids come here?

-Delinquents.

2. At what stage of the proceeding are they?

-May be right off the street awaiting a detention hearing, may be awaiting trial, may be serving a sentence.

3. What is the average stay of pre-adjudicatory kids?

-Nine days.

Clinton: Yes.

12. Under what circumstances are kids placed in jail?

Franklin: If child is violent in the detention home, a security problem, close to 18, or the alleged offense is very serious. (Kids are separated from adults.)

Clinton: Jail used frequently since no separate juvenile detention facility.

13. Is the public defender's office adequately staffed?

Franklin: Yes, but could always use more help.

Clinton: Yes and no. Is adequate now, were overloaded a bit last year.

14. Are kids detained according to formal criteria?

Franklin: Yes, the rules and statutes.

Clinton: Judge tries to follow rules and statutes.

15. What is the role of counsel at the disposition stage?

Franklin: Advocate, social worker, investigate alternatives.

Clinton: Talk to mental health people, counselors, parents, probation officer. Gives judge a "sentencing brief."

16. What percentage of kids are represented by counsel?

Franklin: Estimate that perhaps 50% of all cases that go through juvenile court are represented by the public defender's office.

Clinton: Has no idea.

law enforcement

1. Are there written criteria, policies, etc. for arrest?

Franklin: Not really, just "standard operating procedure" as described in their manual. The decision to make an arrest is highly discretionary.

Clinton: Are written guidelines specifying "automatic hold" for certain kinds of offenses, but the arrest decision is still very much within the officer's discretion.

2. Are status offenders ever detained or arrested?

Franklin: Rarely.

Clinton: Yes, but not without a warrant.

3. How long is a kid held at the police station? Where is he held? What happens during this time?

Franklin: Twenty to thirty minutes - depends on how long it takes to get transportation to the detention home. The kids are held in special pre-adjudicatory intake interview, but does not state whether that interview is a prerequisite to the filing of a petition, or is simply required to insure that all juveniles are to have available all possible diversionary remedies. Under Section 1102(A) the filing of a petition gives the district court jurisdiction over any child found within the county. The court does not have jurisdiction over the child until a petition is filed, yet the mandatory intake interview must be held before a petition can be filed. Without jurisdiction over the child, it is unclear how the child is to be compelled to undergo intake. (See Recommendations for a more detailed discussion of these issues.)

Oklahoma and Stephens Counties differ tremendously in population, and therefore in the number of children who come to the attention of community services and to the court. This population distinction alone accounts for the fact that there are basic differences in the physical set-up of the Court, in the number and type of community services, and in the court-related procedures and services.

The most obvious and visible difference between the two counties is the court itself. Oklahoma County has a juvenile division which is physically separated from the adult courts and served by three full-time judges[64] - one District Judge and two Special Judges. There are three court rooms specifically set aside for juvenile proceedings, and there is activity in them every day. The Oklahoma County District Attorney's office has a juvenile division, whose staff members handle only juvenile matters; and there is a Public Defender's office whose staff is court appointed to represent juveniles who do not already have attorneys. In Stephens County, as in most Oklahoma counties, the Associate District Judge is assigned juvenile matters, along with other court business. Wednesday is juvenile day, and the bulk of juvenile proceedings are conducted on that day. The Stephens County District Attorney's office does not have a separate juvenile division, nor is there a public defender's office. When court appointed attorneys are needed, they are appointed from the local Bar on a rotating basis. The function of the police department is basically the same in both counties to apprehend offenders, investigate complaints, and to send the child home or refer him to the proper authority or agency.

Oklahoma County has both the statutorily authorized Juvenile Bureau and a Youth Service Center. It has separate juvenile detention facility and several shelter care facilities, as well as numerous agencies to which children can be referred for diversionary, prevention, medical, counseling and other services.[65]

Stephens County has no Juvenile Bureau, since it does not meet the statutory population requirement. Intake, probation and parole services are provided by the Court Related and Community Services personnel (CRCS) under the Department's contract with the Supreme Court.[66] The Stephens County Youth Services Center operates a shelter care facility. The juvenile detention facility consists of separate cells in the county jail. Like Oklahoma County, Stephens Count- has various community agencies and resources to which juveniles may be referred for appropriate and needed services.

Oklahoma Children's Code In Operation

In order to have some idea of how the statutory provisions concerning children who are alleged or adjudged to be delinquent, deprived or in need of supervision are being put into practice, key officials were interviewed in one urban and one rural county.[61] Since the Oklahoma statutes draw a distinction between counties with over 100,000 population and those that are under that figure for purposes of establishing Juvenile Bureaus, the population distinction was initially employed as the basis for determining which counties were rural and which were urban.[62] Only three counties have over 100,000 population, and Oklahoma County, rather than Tulsa or Comanche Counties, was chosen as the urban county from a list of approximately 15 counties with medium rates of arrest and petition filing.[63] No statistical factors indicated that either of these counties would be unique, nor were there any particular persons in these counties whose attitudes or reputations influenced the choice of counties. Rather, it was hoped that both Oklahoma and Stephens Counties would be typical of their size county.

The individuals interviewed were, in many cases, the only individuals who held a particular job or dealt with juveniles in that office. Where there was a choice of individuals, availability determined who was interviewed. As set forth by the terms of the internship program, those interviewed were judges, district attorneys, defense attorneys, detention and shelter care administrators, court workers, and police officers. Sample questions asked of these persons are attached in Appendix B.

All those interviewed were exceedingly cooperative and eager to discuss their roles and their views of the juvenile justice system. Each person had a role separate and distinct from all the others, and because of this, each person's view of the system was necessarily different from each of the other's views. All the officials appeared to conscientiously and sincerely evaluate the system, noting areas of the law which seem vague or ambiguous, pointing out what they felt to be impediments to adequately carrying out the duties of the particular office, and making constructive criticism about the roles of other officials as those roles were understood and observed.

Both counties follow the statutory procedure; however there are certain sections of the statute which are ambiguous and therefore difficult to interpret and put into practice. For example, Section 1101(h) calls for a mandatory

certification and reverse certification

Certification, or waiver to adult court, is the process by which it is determined that a juvenile will be held accountable for his acts as if he were an adult and will be held for criminal proceedings in adult court.[56] In order to certify a juvenile in Oklahoma, the child must have committed a felony, and there must be a preliminary hearing in which it is found that there is merit to the complaint, and that the child is not amenable to rehabilitation under the juvenile system.[57]

The certification procedure is found in Section 1112(b) of the Juvenile Code and has been a part of juvenile procedure since the Code revision in 1968. In 1978 a reverse certification procedure was added to the Code by the enactment of Section 1104.2. Reverse certification, as the label indicates, operates in reverse of the typical certification procedure. The offender enters the criminal justice system as an adult. After the proper motions are filed and hearings are held, he is, under the proper conditions, certified as a juvenile to be handled in the juvenile division of the court. Reverse certification, applies only to 16 and 17 year olds who are alleged to have committed one of the major felonies enumerated in the statute: murder, for instance.[58]

At the same time that Section 1104.2 was added to the Juvenile Code, Section 112(b) was amended to reflect the addition of the reverse certification procedure. (The certification procedure in Section 1112(b) was not disturbed.) Both Section 1104.2 and Section 1112(b) used wording which was confusing, in that they authorized 16 and 17 year old felony offenders to be treated as adults, but spoke of filing a petition against these youths. In other words, language of both the adult system and the juvenile system was intermingled. As a result, these two sections were ultimately declared unconstitutionally vague.[59] While the challenge to the statutes was technically directed against the "reverse" certification provisions, the Court of Criminal Appeals clearly declared Section 1112(b) unconstitutional, thereby striking down the certification procedure as well as the reverse certification procedure.

In anticipation of the Court of Criminal Appeals' ruling, the 1979 Legislature amended Sections 1104.2 and 1112(b) in an effort to eliminate constitutional objections.[60] These amendments will become effective October 1, 1979, at which time certification and "reverse" certification will again be viable procedures in Oklahoma.

practice, the court reviews the case periodically and can make new dispositional orders as they become appropriate. By contrast, an order adjudicating a child to be delinquent and committing the child to the Department is to be for an indeterminate time.[44] When a delinquent child is committed to the custody of the Department, the court no longer controls the length of time the child can be held;[45] nor is there any authority for the Department to seek further instructions from the court regarding the child[46] Recently, the Oklahoma Supreme Court held that the trial court does retain the power to dismiss a case after the child is committed to the custody of the Department.[47] The extent to which the trial court has any other power over a juvenile committed to the Department is not entirely certain and continues to be debated by juvenile officials.

Placement of children who are in custody of the Department is subject to both statutory and administrative guidelines. First, the statutes set out with specificity the types of placement which may be made - state home, foster home, correctional facility - the place to be determined depending upon the adjudicatory category of the child.[48] In addition, the Department has established a Juvenile Intake, Probation and Parole Board whose function is to review standards, policies, practices and procedures as well as to review parole revocations of children who have been adjudged delinquent or in need of supervision and who are in custody.[49]

time frames

Few statutory provisions set forth time frames within which the juvenile is to be processed through the system. Existing time limitations include the requirement that a petition must be filed within five days of the date on which a child is taken into custody, or the child must be released to the parent, guardian or legal custodian.[50] In those cases in which the petition alleges cruelty on the part of the parents, the petition must be filed within a reasonable time, and the five day limit does not require the child's release to those parents.[51]

Whenever a child is taken into custody, he must be taken immediately before a judge or to the place of detention or shelter, and he may not be held beyond the next judicial day without an order from the court at a detention hearing.[52] A pre-adjudicatory detention or custody order may not remain in effect for more than 30 days, except that the court may extend the order for an additional 60 days upon a showing of good cause.[53]

No statutory time limit is set on when the adjudicatory and dispositional hearings are to be held, except that no hearing may be held until at least 48 hours after the service of summons without consent of parents.[54]

As noted in the section on custodial care, juveniles may be held in an adult detention facility, under certain conditions, in a room or ward separated from the adults, and for no longer than 72 hours.[55]

constitutional rights and due process

In the wake of Gault and Kent, Oklahoma began to extend a wider range of due process protections to juveniles than had previously been required by statute. Specifically, separate adjudicatory and dispositional hearings are required;[31] information gained by questioning a child is inadmissible unless the questioning is done in the presence of the child's parents, guardian, legal custodian or attorney, and then only if both parent and child have been advised of their constitutional rights.[32] All juveniles have the right to demand a jury trial for adjudication hearings;[33] and those hearings are to be conducted according to the rules of evidence.[34] Juveniles were granted the right to cross-examine witnesses under the 1969 Code revisions;[35] and in 1975 were guaranteed the right to remain silent at an adjudicatory hearing.[36]

custodial care - separation from adult offenders

Philosophically, the statutes encourage the least restrictive alternative in custodial situations. Whenever a juvenile is taken into custody, he is to be released to his parent, guardian, legal custodian or attorney, unless release is impractical, inadvisable or has been otherwise ordered by the Court.[37] If the child is not released, he must be immediately taken before a judge or to the place of detention or shelter.[38]

Statutory policy is against confining children under 16 years of age in any police station, prison, jail or lock up, and against transporting or detaining them with criminal, vicious or dissolute persons.[39] Under certain conditions, older juveniles may be placed in adult facilities, but only in a room or ward entirely separate from adults, and then for a maximum of 72 hours.[40] Except for the runaway child who may be placed in detention for his or the community's safety, children in need of supervision are to be placed in foster or shelter care and not in detention.[41]

dispositional alternatives

Once a child has been adjudicated delinquent, deprived or in need of supervision, and declared a ward of the court, a dispositional hearing is conducted to determine the most appropriate treatment. Possible dispositional alternatives include placing the child on probation, or under supervision in his own home, or in the custody of some suitable persons; committing the child to the custody of a private institution or agency; committing the child to the custody of the Department; terminating court jurisdiction for good cause; and terminating parental rights.[42]

Whenever a deprived child, delinquent child, or child in need of supervision is committed to the custody of a private institution or agency, that institution or agency is required to give the court such information about the child as the court may require at any time.[43] In functioning throughout the state.[24] The emphasis of these Centers is on prevention and diversion from the traditional juvenile justice system. The are multi-funded, independent agencies, operating under the direction of local Citizen's Boards of Directors, which have responsibility for the total functioning of the Center.

The formal statutory juvenile justice process, as well as the programs operated under SJR 13, emphasize diversion and prevention. For instance, a mandatory pre-adjudicatory intake interview is required of all children referred to the system.[25] This intake, or preliminary inquiry, is conducted to determine, among other things, whether non-adjudicatory alternatives are available for the child.

status offenders

Status offenders are those juveniles who commit acts which bring them within the provisions of the Children's Code, but which would not be crimes if committed by adults. These offenders are the so-called children in need of supervision who repeatedly disobey reasonable parental commands, or who are willfully absent from home for substantial periods of time without parental consent.[26]

There is another group of children, who, though technically not status offenders, are subject to situations beyond their control, such as parental failure to provide supervision and care, which bring them within the jurisdiction of the Court as deprived children.[27]

On October 1, 1979, a new law will become effective, under which truants may be adjudicated in need of supervision or deprived, because of willful and voluntary absence from school for a specific number of days within a prescribed period of time without a valid excuse.[28] While children adjudicated in need of supervision or deprived because of truancy alone may not be removed from the custody of their parents or placed in institutional facilities, they and their parents may be ordered to under go counseling and treatment under the provisions of the new law. Prior to final disposition, children who have been adjudged truants must be evaluated for learning disabilities, mental retardation and hearing and visual impairments. The results of this testing are to be made available to the court for use in determining the appropriate disposition.

Children in need of supervision and deprived children are processed through the juvenile justice system in the same manner as delinquents-they undergo intake, may be referred to community agencies, and if formally processed, are given adjudicatory and dispositional hearings. When taken into custody, these children may not be placed in detention facilities, but must be placed in shelter care, foster care, or released to the parents.[29] A child who is in need of supervision as a result of being a runaway may be placed in detention under a court order when to do so is essential for the safety of the child or the community.[30]

Adjudicatory hearings must be conducted according to the rules of evidence, but dispositional hearings may include any records and reports that may help the court in determining the appropriate disposition. Custodial interrogation is conducted according to statutory rules. These and other statutory procedures are presented in the flow chart.

The only difference in the statutory scheme in terms of its application in the various counties of the state is that in each county having a population of 100,000 or over, according to the last federal dicennial census, there is created a statutorily authorized Juvenile Bureau under general supervision of the Judge of the Juvenile Division of the District Court.[18] These Bureaus, established in Oklahoma, Tulsa and Comanche counties, provide certain administrative functions at the request and direction of the Court. Seventy-three of the remaining 74 counties are serviced by the Department of Institutions, Social and Rehabilitative Services (the Department) under contract with the Oklahoma Supreme Court.[19] One county continues to use a court designated authority to provide court-related services such as intake.[20]

juvenile justice issues

Across the nation, concern has been directed to many issues in the juvenile system. Some of these issues which have been addressed in the Oklahoma Children's Code are: (1) delinquency prevention and diversion from the formal judicial system; (2) treatment of status offenders; (3) constitutional rights and due process safeguards; (4) separating juvenile offenders from adults; (5) dispositional alternatives; (6) time frames within which specific procedures are to take place; and (7) waiver, or certification, of a child from juvenile to adult court jurisdiction.

diversion and delinquency prevention

In 1975, the Oklahoma Legislature enacted SJR 13 to reduce the incidence of delinquency by the development of community-based prevention and diversionary youth services programs, with a view to keeping children with a high potential for delinquency out of the traditional juvenile justice process. SJR 13, encoded as Sections 601-606 of Title 10, designated the Department of Institutions, Social and Rehabilitative Services as the State Planning and Coordinating Agency for statewide juvenile justice and delinquency prevention services.[21] The Department was authorized to enter into an agreement with the Oklahoma Supreme Court to provide intake, probation and parole services in those counties which did not have a statutorily authorized Juvenile Bureau.[22] Pursuant to that agreement, intake, probation and parole services currently are conducted on a uniform basis in 73 counties under detailed guidelines promulgated by the Department. The Department also was authorized to enter into agreements for the establishment of community-based prevention and diversionary youth services programs, including emergency shelter, job placement and other services.[23] There are currently 40 Youth Service Centers

Oklahoma's juvenile system emphasizes diversion and prevention. Many children are referred to community agencies and never come to the attention of the court. Far more children are diverted from the system than actually enter it, but because this study dealt primarily with the statutory mechanism, the focus of the following evaluation is on the statutory judicial system.

Because of the larger number of juveniles processed through the Oklahoma County Juvenile Court, movement through the system is somewhat slower than it might be in a smaller county with less crowded dockets. The statutes allow juveniles to be detained for a maximum of ninety days prior to adjudication;[67] and in Oklahoma County, the full ninety days may be used, because it may take that long to schedule and conduct court appearances and the attending interviews and evaluations. This does not mean that vast numbers of juveniles are being held, but simply that those who are kept in custody may be kept for the full statutorily allowed period.[68]

Because Stephens County is smaller and handles fewer juveniles, it is able to process children through the judicial system from initial referral to disposition in as little as two to three weeks. Consequently, rarely is a juvenile held in pre-adjudicatory detention for more than a few days.

Oklahoma County routinely conducts arraignments for alleged delinquents. At arraignment bond may be set, if it was not already set at a detention hearing. An attorney may be appointed if the child does not have one or cannot afford one. At the arraignment the juvenile may enter a plea. A plea may be "not guilty" or "guilty". A guilty plea is called a stipulation.[69] Most Oklahoma County juveniles do not stipulate, that is, they plead not guilty and demand a jury trial. The date for the adjudicatory hearing is set when the plea is not guilty. If the plea is guilty, the date for the dispositional hearing is set, since there is no longer any need for an adjudicatory hearing.

Stephens County, on the other hand, does not routinely hold an arraignment. It employs the detention hearing to set bail, appoint an attorney, explain the juvenile process, and advise the juvenile and his parents of their constitutional and legal rights. Usually no plea is taken at this time, because the detention hearing is often held within a few hours of the child's having been taken into custody, and no petition has yet been filed. Once a petition has been filed, most juveniles stipulate. Few of them demand a jury trial. Adjudicatory and dispositional hearings can be and almost always are scheduled within two weeks.

Oklahoma statutes authorize taking into immediate custody a child who is found violating a law or ordinance or whose surroundings are such as to endanger the child's welfare.[70] This allows police officers and Welfare Department officials to take a child into emergency temporary custody without a court order to protect the child's safety and health. As a practical matter, emergency temporary custody is taken only after a motion has been presented to the court apprising it of an endangering situation. Then the court issues an order authorizing the child to be taken into emergency temporary custody. Once emergency custody has been assumed, a timely show cause hearing is held in Oklahoma County, in

best copy available

order for the parents to present evidence, and to challenge the removal of the child from their custody. Stephens County does not hold show cause hearings in emergency custody cases. Section 1105 of the Juvenile Code prohibits the court from holding a hearing in less than forty-eight hours after service of summons, and case law requires merely a timely hearing.[71] Adjudicatory hearings can be held within a few days in Stephens County, thus satisfying both statutory and case law.

American Bar Association Standards

The terms of the internship program call for comparing the American Bar Association Standards on Juvenile Justice with the state statutory procedure. Other organizations have promulgated juvenile justice standards which are just as worthy of consideration and contrast, but the time limits within which the internship program is conducted prohibit the study of all available models.[72] Consequently, as a means of providing at least one acceptable measure of comparison, the ABA Standards have been chosen.

Perhaps the most significant contrast between the ABA Standards and the Oklahoma system is that under the ABA Standards, non-criminal behavior is not a basis for court jurisdiction. The tentative draft of the ABA Standards called for removal of status offenders from the juvenile justice system, and allowed for court intervention as a last resort only.[73] Juvenile difficulties in the school system fall into two categories: failure to attend, and disciplinary problems. The court's sole function is cases of truancy is to develop a plan with the parents and the child. When disciplinary problems are at issue, the court has review power over adversarial hearings conducted by the school system.

Children who are abused and neglected fall under the jurisdiction of the court, and may ultimately be adjudged endangered. At that time, a specific plan for dealing with the situation is developed and carried out under court supervision.

Alleged delinquents come within the jurisdiction of the juvenile court under the ABA Standards. The process is basically the same as that found in the Oklahoma Statutes: referral to the system, prevention and diversionary alternatives, intake, petition, adjudication, waiver (certification) and disposition.

Several points are worthy of specific mention. First, the ABA Standards, like the Oklahoma system, place priority on delinquency prevention and diversion from the formal judicial process. Also, the ABA Standards set out specific time limits within which the various stages of the process must take place. For example, if a child is held in detention, there is to be a "status hearing," or review, every seven days. ABA Standards allow for the lodging of pre-petition complaint. If a child is detained, the complaint must be acted upon within 24 hours of the assumption of custody. If the child is not in custody, the complaint must be acted upon within 30 days of the filing of a petition, or if the child is detained, within 15 days of admission to detention. The dispositional hearing is to take place within 15 days of conviction if the juvenile is detained, otherwise within 30 days of conviction.

The use of the term "conviction" indicates that under the ABA Standards, the juvenile delinquency system is viewed as more nearly criminal in nature, rather than as a quasi-criminal, quasi-civil proceeding. The nature of the proposed dispositions reflects this view. Under ABA Standards sentencing with minimum and maximum time limits is established based on the type of offense and the potential punishment which could be imposed if the offense had been committed by an adult. This type of sentencing makes it clear to all parties exactly what the outside limits are in terms of time and treatment, while still allowing for rehabilitation alternatives suited to the individual needs of the child.

Federal Laws

Oklahoma is not subject to the provisions of the Juvenile Justice and Delinquency Prevention Act; therefore that Act will not be considered in this study.

There is, nevertheless, another federal law which Oklahomans should be aware of: The Federal Youthful Offenders Act.[74] Sections 5005-5026 of Title 18 of the United States Code contain the Youth Corrections Act, which applies to persons between 18 and 22 years of age at the time of conviction.[75] This Act was designed to increase the flexibility of choices available to the sentencing court and to enable federal judges to select courses of treatment that will promote rehabilitation of those who, in the opinion of the court, show promise of becoming useful citizens, and avoid the transformation of many of these youths into habitual criminals.[76] The Act seeks to attain these goals by accenting rehabilitation rather than punishment.[77]

Sections 5031-5042 on Juvenile Delinquency are also worthy of note in that they include provisions for transferring a juvenile offender to adult court; prescribe the conditions under which predisposition detention may be conducted; set forth time limitations on adjudicatory and dispositional hearings; and place priority on community-based corrections.

Recommendations

The Oklahoma Juvenile Justice System is so extensive that it is difficult to know where to begin in making recommendations for its improvement. Issues pertaining to juvenile justice are complex, and it is a difficult task to find universally acceptable solutions to all the problems which arise within the system. Because the issues are many, and universally acceptable solutions are few, only a select number of recommendations are submitted in this study. Hopefully, they will act as a spring board for discussion and serve as a catalyst for further in-depth examination of the juvenile code.

All the following recommendations were made by one or more of the persons interviewed in this study. The first set of recommendations are directed toward the existing provisions of the Children's Code, and are made as a means of eliminating ambiguity and guesswork in the implementation of the statutes. The second set of recommendations is broader in scope, and envisages, sweeping changes in various parts of the juvenile justice system.

I. RECOMMENDATIONS FOR MODIFICATION AND CLARIFICATION OF EXISTING STATUTORY PROVISIONS IN ORDER TO FACILITATE IMPLEMENTATION OF THE STATUTES.

A. Clarify who has authority to file a juvenile petition.

Section 1103(b) of the current statutes states: "A petition in a juvenile proceeding may be filed by the district attorney or the person who is authorized to make a preliminary inquiry..."

Section 1109(c) authorizes the district attorney to "prepare and prosecute any case or proceeding within the purview..." of the Juvenile Code, but provides that an employee of a duly constituted juvenile bureau may also prepare and prosecute cases under the Children's Code.

Section 1204 empowers the director and counselors of the juvenile bureau to "file, or cause to be filed, information or complaint and to institute and commence the necessary legal proceedings" relating to children within the purview of the Code.

House Bill 1493, passed by the 1979 Legislature, amended Section 1109(c) by deleting the authority of the juvenile bureau employees to prepare and prosecute cases.

It is unclear if the legislature intended that, as of October 1, 1979, only the district attorney will be able to file petitions.

RECOMMENDATION:

Empower only the district attorney to file petitions, by conforming Sections 1103(b) and 1204 to Section 1109(c) as it is found in House 1493.

B. State whether or not the court has jurisdiction over a child who has been released from custody without a petition being filed within five days of the assumption of custody.

Discussion:

Section 1104.1B requires that "where a child has been taken into custody under any provision of the Juvenile Code before a petition has been filed, a petition must be filed and a summons issued within five (5) days from the date of such assumption of custody, or custody of the child must be relinquished to his parent..."

The intent of Section 1104.1B is to limit the amount of time a child may be kept in custody without "charges" being filed; but there is no direction to the court as to what procedure is to be followed when the petition is not filed within the five day limit and the child is released.

RECOMMENDATION:

Add to Section 1104.1B "Failure to file a petition within five days of the date of assumption of custody divests the court of jurisdiction over the child concerning the transaction for which the child was taken into custody."

C. Clarify the procedure to be followed in terminating parental rights.

Discussion:

1. Section 1102.1 states that "where the evidence in an action for a divorce or in subsequent proceedings in such actions... indicates that a child is deprived or in need of supervision," the court may hold adjudicatory and dispositional hearings and terminate parental rights or the court may transfer the issue to the juvenile docket.

   This section gives the court dealing with a divorce or similar action a choice of hearing the termination issue as a part of the divorce proceedings or of transferring the termination issue to juvenile court. This election raises due process issues. It is possible for a parent to go into divorce court and come out divested of his/her parental rights without having been given notice that termination of parental rights was to be at issue.

   RECOMMENDATION:

   Section 1102.1 should state "where the evidence in an action for a divorce... indicates that a child may be deprived or in need of supervision, the court shall refer the child to Court Related and Community Services under the provisions contained in §§601-602 of this Title for juvenile proceedings. The judge of original jurisdiction shall not conduct juvenile proceedings under this referral.

2. Section 1130A4 authorizes the juvenile court to terminate parental rights upon a finding that a child is deprived and that a noncustodial parent has willfully failed to contribute to the support of a child, during the preceding year, as provided in a proper court order or consistent with the parent's means and capacity.

   Section 60.6 of the Adoption Act, as found in Title 10, allows for adoption without parental consent where the parent has willfully failed to contribute to the support of the child for the year preceding the filing of an adoption petition. Section 60.6 states that under these conditions it is not necessary to terminate parental rights under Section 1130.

   These two sections cause confusion, because Section 60.6 can be interpreted to allow termination of parental rights to a child who is deprived, and whose noncustodial parent has failed to pay support for the requisite time period.

   RECOMMENDATION:

   Amend Section 60.6 by deleting: "and where the above conditions exist it shall not be necessary to terminate parental rights under Section 1130 of this title prior to the adoption of said child." and by adding to the Section a separate paragraph which states: "This Section is a private adoption act and applies only to adoption of children who are not subject to the jurisdiction of the juvenile division of the District Court."

D. Amend Section 1101(b)(3) as set forth in House Bill 1493 to more properly define a delinquent child.

This subsection defines a delinquent child as "any sixteen or seventeen year old who has been certified for juvenile proceedings by the criminal division of the district court." Such a definition presumes guilt.

RECOMMENDATION:

Eliminate #3 under 10 O.S. §1101(b)(3), because subsection (1) includes these juveniles.

E. Delete the last sentence in Section 1109(b) of House Bill 1493, which authorizes the district attorney to be appointed guardian ad litem for a child alleged to be deprived.

Discussion:

This provision presents a possible conflict of interest for the district attorney. If a child who is adjudged deprived is ever alleged to be delinquent, the district attorney will be placed in the position of guardian and prosecutor.

RECOMMENDATION:

Strike the last sentence of Section 1109(b) of House Bill 1493 which states: "Provided that ... child."

F. Amend Section 1102A to give the court jurisdiction over any child alleged to be delinquent, deprived or in need of supervision, when the evidence indicates that the acts giving rise to the allegations occurred within the county, rather than over juveniles found within the county.

Discussion:

Article 2, §20 of the Oklahoma Constitution extends to an adult accused the right to trial in any county where the evidence indicates the crime may have been committed. Convenience as much as anything else calls for venue to be placed in that county. Both prosecution and defense are difficult if witnesses and other important parties are in another county.

By analogy, the same reasoning applies to delinquency proceedings as well as to proceedings over children who are deprived or in need of supervision. The place of the act, not the location of the actor, should determine venue.

RECOMMENDATION:

Amend Section 1102A to read: "Upon the filing of a petition, the district court shall have jurisdiction over any child who is or is alleged to be delinquent, in need of supervision or deprived when the evidence indicates that the acts giving rise to the filing of the petition occurred within the county."

G. Eliminate reverse certification.

Discussion.

Because of the constitutional issues which in all likelihood will continue to be raised over the reverse certification law, the law appears to be destined for continued appellate court interpretation, keeping the lower courts in a constant state of confusion and uncertainty, and making it impossible to know exactly how to handle 16 and 17 year-olds who commit a major felony. These youths may be caught in a procedural nightmare and be processed as both juveniles, and as adults, thus being kept in the system longer than they would otherwise be.

RECOMMENDATION:

Strike Section 1104.2 and all sections referring to it.

H. Permit a petition to be amended to pray for a different adjudicatory category.

Discussion:

Section 1103.1B does not allow the court to amend the adjudicatory category prayed for in the petition. This is a problem area for two reasons: 1.) After the petition is filed, it may be felt that an inappropriate adjudicatory category was used. Under current law, the petition would have to be dismissed, new intake would be given and a new petition filed. These procedures take time and keep the juvenile tied up in the system longer than he needs to be. 2.) Dispositional alternatives vary according to the adjudicatory category. Consequently, there may be some maneuvering of categories depending upon the disposition which may be desired by the persons who file a petition. Without the power to amend the adjudicatory category, there is no check on this type of maneuvering, and the court will have to dismiss or adjudicate contrary to its judgment and perhaps contrary to the evidence.

I. Determine whether or not intake is mandatory as a prerequisite to the filing of a petition.

Discussion:

Section 1101(h) defines intake as: "a mandatory, preadjudicatory interview of the child and where available his parents, guardian or custodian performed by a duly authorized individual to determine whether a child comes within the purview of this chapter, whether other nonadjudicatory alternatives are available, and whether the filing of a petition is necessary."

It is unclear whether it is intended to be a prerequisite to the filing of a petition.

RECOMMENDATION:

Because public policy favors the extension of non-judicial alternatives to juveniles, Section 1103, which sets forth the procedure for filing petitions and the conduct of intake, should be amended to add to subsection "b": "Provided, no petition may be filed without an intake interview having been made as authorized in subsection a."

J. Allow juveniles to waive their constitutional rights (to remain silent, etc.) only in the presence of the judge and counsel, and only after complete, full explanation of their rights and the effect of waiver.

Discussion:

Title 15, Section 11 provides that all persons are capable of contracting except minors. Section 13 defines minors as persons under 18 years of age. Title 21, Section 152 states that children under 7 are incapable of committing crimes. There is no prohibition against juveniles waiving their constitutional rights, yet they may not contract, and if young enough, are not even capable of committing crimes. Under the present law, contracting is more important than constitutional rights.

RECOMMENDATION:

Amend the juvenile code to provide that juveniles may not waive their constitutional rights except before a judge and with counsel, after their constitutional rights have been explained, and the ramifications of waiving those rights have been thoroughly laid out.

II. RECOMMENDATIONS BY THOSE INTERVIEWED FOR BROAD-SWEEPING BASIC MODIFICATION AND/OR SIGNIFICANT ADDITIONS TO THE JUVENILE JUSTICE SYSTEM.

A. Expand Dispositional Alternatives for "Youthful Offenders"/Youthful Offenders Act.

Discussion:

Section 1139(b) requires that unless released earlier, a child adjudged delinquent and committed to the Department shall be discharged when the child becomes 18. Under Section 1102A, once court jurisdiction is obtained over a delinquent child, it may be retained until the child becomes nineteen years of age. The court may have jurisdiction over a child and not be able to commit him to the custody of the Department which handles probation and parole services. This eliminates an important dispositional alternative, and does not allow for the full range of treatment for those offenders who commit an offense before they are eighteen years old, but turn eighteen shortly thereafter.

RECOMMENDATION:

Careful study should be given to the possibility of expanding dispositional alternatives through a youthful offenders act. Any such expansion to provide services for those past 18 will have impact on both juvenile and adult systems in the state. Such factors as age of jurisdiction, court of jurisdiction, facility and treatment requirements, crime, costs, etc. should be examined before legislative action (if any) is taken.

B. Remove status offenders from the juvenile justice system and adopt a comprehensive parental responsibility act.

Discussion:

The juvenile system is frequently used as an "out" for parents who cannot or will not supervise and care for their children. Juveniles are too often brought into the system through no fault of their own. They run the risk of being emotionally and needlessly traumatized, and worse, of being transformed into habitual criminals.

Families in trouble should be counseled and treated by private and public agencies outside the judicial system; and parents, not their children, should be made accountable for parental failings.

By removing status offenders from the juvenile system, court officials can better concentrate their energies on delinquency, and the best interests of all children and society will be better served.

RECOMMENDATION:

Removal of status offenders from the juvenile justice system is a recommendation advanced by several standards setting and advisory groups. It does bear further examination.

C. Institute a system of sentencing within statutorily prescribed limits setting forth the maximum time for which a juvenile may be kept under the jurisdiction of the court or in the custody of the Department.

Discussion:

The criminal code sets forth the possible penalties - imprisonment and/or fines - which may be imposed upon an adult who commits a crime. The offender knows the maximum limits of punishment. This is not the case in the juvenile system. Currently, the court obtains jurisdiction over juveniles at the time a petition is filed. Jurisdiction is retained over a delinquent child until he is 19. The Department may retain custody over a delinquent until the child reaches 18. The length of time a child stays within the system depends upon the age at which he enters the system, i.e., an 8 year old delinquent can be under court jurisdiction for 11 years, or under Department custody for 10. Dispositional alternatives, within the guidelines of Section 1116, are varied and limited only by the resources available in the community, space available in public and private institutions, and by the judgment and creativity of the individuals who test and evaluate the juvenile.

Since the object of the Children's Code is to do what is in the best interests of the child, definite, prescribed sentencing alternatives are a must for those who are adjudged delinquents. Without such limits, it is impossible to advocate in the best interest of the child. ABA Standards recommend sentencing that has maximum limits on confinement and conditional release. These limits are based on the gravity of the offense.

D. Require that delinquency proceedings be conducted under the rules of criminal procedure.

Discussion:

Article 2, Section 20 of the Oklahoma Constitution accords an accused the right to a speedy and public trial, by an impartial jury in the county in which the crime was committed, or in which the evidence indicates it was committed. The accused shall be informed of the nature and cause of the accusation against him and shall be furnished a copy of it. He shall have the right to be confronted with witnesses, and shall have compulsory process for obtaining witnesses in his behalf. He shall have the right to proceed by himself or with counsel, and in capital cases, is to be furnished a list of witnesses and their addresses at least two days before trial.

Title 22 of the Oklahoma Statutes set forth the Rules of Criminal Procedure. Detailed provisions have been enacted on how to conduct proceedings before trial, including arraignment, preliminary hearing. All actions taken with regard to an adult accused of and tried for a crime are laid out. Such detail safeguards the accused, as well as eliminates confusion and uncertainty for court officials. No such detailed provision exists for juvenile actions, and as many officials have observed, "We just hope we're doing it right."

RECOMMENDATION:

This suggestion requires much detailed study and analysis as it would completely change the entire juvenile justice system in Oklahoma.

CAVEAT

The Oklahoma Juvenile Justice System is an intricate system comprising many formal and informal proceedings. The statutory scheme is not easy to fathom, and the extra-statutory and extra-judicial possibilities are nearly limitless. The flow chart which accompanies this report is not intended to be a definitive step-by-step analysis of the statutes. The statutes are simply not as clear as a visual chart makes them appear. The commentary and analysis of the Oklahoma system only scratch the surface. To do a thorough job of investigating the system as found in the statutes, and as implemented in the court system, would require much more time than the ten weeks allowed for this project. The recommendations which are presented in this study are but a few of the recommendations which have been made by juvenile officials. Many more recommendations could be made, time permitting.

Conclusion

Like all juvenile codes, the Oklahoma Juvenile Code is a product of compromise and changing attitudes. The object of the code, however, has always been to serve the best interests of the children of this state. In keeping with this goal, court officials and legislators must not merely extend to juveniles who come within the purview of the Code their full constitutional rights as citizens of this country, but also provide them with the best possible community resources. It is hoped that this study will aid in the process of continuing evaluation, and that the recommendations presented will be given serious consideration, thus encouraging legislative action to further improve the Oklahoma Juvenile Justice System.

Footnotes

1. League of Women Voters of Oklahoma, Juvenile Justice Part I of 4 (1976).
2. In Re: Gault, 387 U.S. 1 (1967).
3. Kent v. U.S., 383 U.S. 541 (1966).
4. See Title 20 of the Oklahoma Statutes relating to Courts.
5. 10 O.S. 1971 §§1109, 1110, and 1111.
6. Contrast 10 O.S. 1961 §§1-457 and 10 O.S. 1971 §§1-1506.
7. See e.g. 10 O.S. Supp. 1978 §1104.1 containing time limitations.
8. See e.g. 10 O.S. Supp. 1978 §1111 extending the juvenile the right to remain silent.
9. See 10 O.S. Supp. 1978 §§601-608 authorizing the establishment of delinquency prevention services.
10. 10 O.S. Supp. 1978 §§601-608.
11. 10 O.S. Supp. 1978 §§1101-1506.
12. 10 O.S. Supp. 1978 §1101(b).
13. 10 O.S. Supp. 1978 §1101(c).
14. 10 O.S. Supp. 1978 §1101(d).
15. See e.g. 10 O.S. Supp. 1978 §§1104.1c and 1116.
16. 10 O.S. 1971 §§1136 and 1138 and O.S. Supp. 1978 §1137.
17. 10 O.S. 1971 §§1116, 1136 and 1138 and O.S. Supp. 1978 §1137.
18. 10 O.S. 1971 §§1201-1210.
19. 10 O.S. Supp. 1978 §§601-608.
20. Garfield County.
21. 10 O.S. Supp. 1978 §601.
22. 10 O.S. Supp. 1978 §602(1).
23. 10 O.S. Supp. 1978 §603, see Oklahoma Department of Institutions, Social and Rehabilitative Services Guidelines for Intake.
24. These Centers serve all 77 counties.
25. 10 O.S. Supp. 1978 §1101(h).
26. 10 O.S. Supp. 1978 §1101(c).
27. 10 O.S. Supp. 1978 §1101(d).
28. SB 234, approved by the Governor June 1, 1979.
29. 10 O.S. Supp. 1978 §1116(d).
30. Id.
31. 10 O.S. Supp. 1978 §§1101(f) and (g).
32. 10 O.S. Supp. 1978 §1109(a).
33. 10 O.S. Supp. 1978 §1110.
34. 10 O.S. Supp. 1978 §1111.
35. 10 O.S. 1971 §1111.
36. 10 O.S. Supp. 1978 §1111.
37. 10 O.S. Supp. 1978 §1107A, See Mook v. City of Tulsa, 565 P.2d 1065 (Okla. Cr. 1977) which holds that confinement pending court appearance is appropriate only when it is impractical or inadvisable to release a child to the parent.
38. 10 O.S. Supp. 1978 §1107A.
39. 10 O.S. Supp. 1978 §1107C.
40. Id.

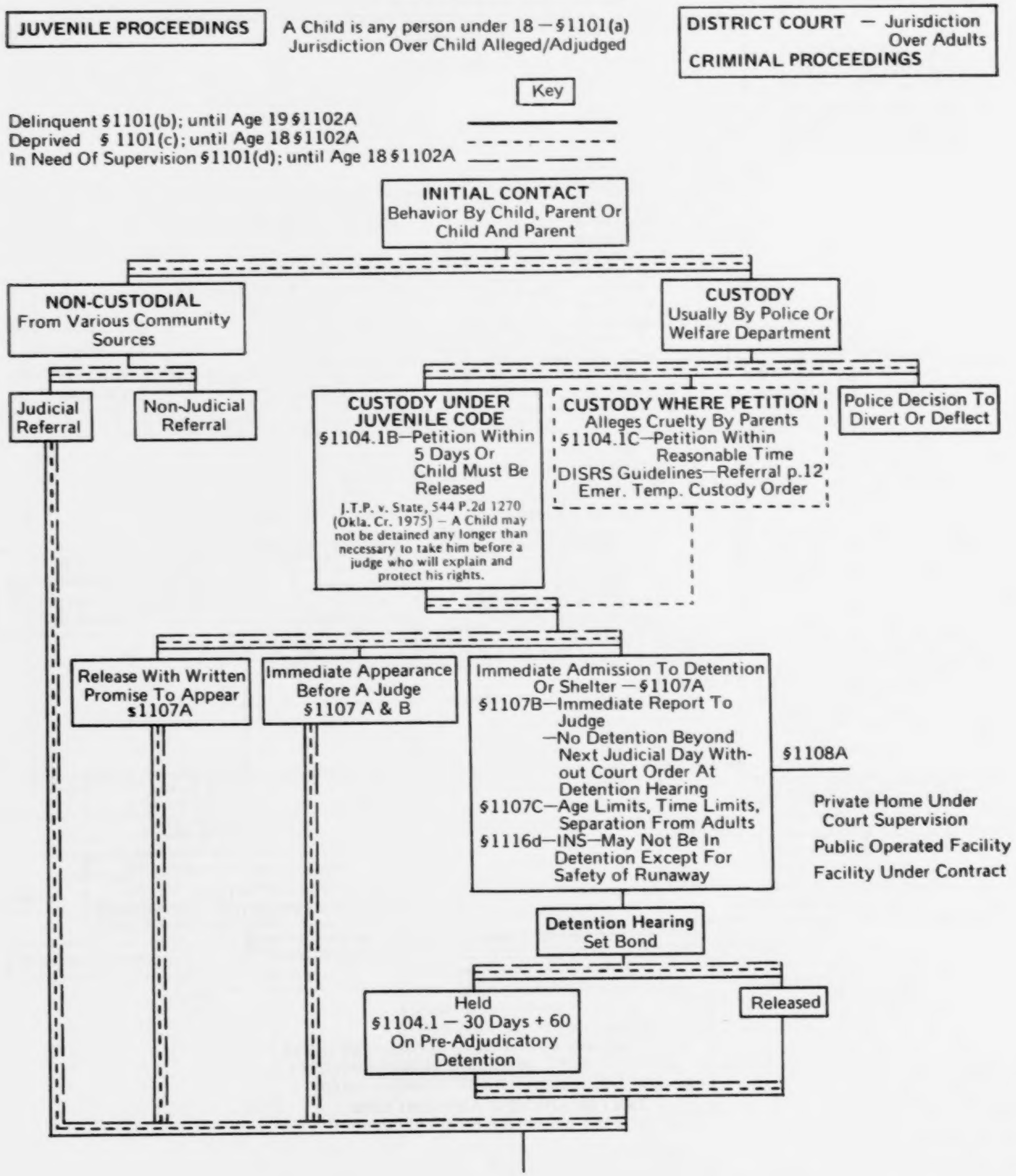
41. 10 O.S. Supp. 1978 §1116(e).
42. 10 O.S. Supp. 1978 §1116.
43. 10 O.S. Supp. 1978 §1116(a) (2).
44. 10 O.S. Supp. 1978 §1116(a) (3).
45. Matter of D.W.S., 563 P.2d 663 (Okla. Cr. 1977).
46. State ex rel DISRS v. Jennings, 561 P.2d 99 (Okla. Cr. 1977).
47. Carder v. Court of Criminal Appeals, 595 P.2d 416 (Okla. 1978).
48. 10 O.S. 1971 §§1136 and 1138 and 10 O.S. Supp. 1978 §1137.
49. See Department of Institutions, Social and Rehabilitative Services Guidelines for Intake, Probation and Parole.
50. 10 O.S. Supp. 1978 §1104.1B.
51. 10 O.S. Supp. 1978 §1104.1C.
52. 10 O.S. Supp. 1978 §1107B. See J.T.P. v. State, 544 P.2d 1270, 1278 (Okla.Cr. 1978) "There is no suggestion in that statute (Section 1107) that a child accused of a crime may be detained by the police for the purpose of interrogation or any other purpose longer than the time necessary to bring him before a judge who will explain and protect his rights."
53. 10 O.S. Supp. 1978 §1104.1A.
54. 10 O.S. Supp. 1978 §1105.
55. 10 O.S. Supp. 1978 §1107C.
56. 10 O.S. Supp. 1978 §1112(b).
57. Id. See also, J.T.P. v. State. 544 P.2d 120 (Okla, Cr. 1975) setting forth 13 guidelines to be followed when a child is taken into custody and is subject to certification to stand trial as an adult.
58. 10 O.S. Supp. 1978 §§1104.2 and 112(b).
59. State ex rel. Coats v. Johnson, Court of Criminal Appeals No. P-79-50, June 21, 1979.
60. HB 1493, approved by the Governor June 1, 1979.
61. The terms of the internship called for interviews of officials in two counties, one urban and one rural.
62. 10 O.S. 1971 §1201.
63. Court statistics are available through the Court Administrators' Office.
64. Oklahoma County is served by one District Judge and two Special Judges as well as a separate referee for juvenile matters. In most other counties the Associate Judge is assigned juvenile matters.
65. The Juvenile Bureau operates the detention facility. Youth Services of Oklahoma County, Inc. operates a youth crisis center and a shelter. The state welfare department operates yet another shelter.
66. See text above at note 26.
67. 10 O.S. Supp. 1978 §1104.1.
68. "Prior to entry of any order of adjudication, any child in custody shall have the same right to be released upon bail as would an adult under the same circumstances." 10 O.S. Supp. 1978 §1112(c). The right to bail is accorded to a child in custody regardless of whether he is alleged to be delinquent or in need of supervision. Op. Atty. Gen. No. 71-410.
69. Because of the bifurcated adjudicatory and dispositional hearings, stipulation is blind, regardless of the county. This means a child will plead guilty without knowing what disposition will be made.
70. 10 O.S. Supp. 1978 §1107(b).
71. York v. Halley, 534 P.2d 363 (Okla. 1975). Implicit in §1105 setting forth the time of hearing is "the inference that the hearing will be conducted timely." Oklahoma County has such crowded dockets, that it would be nearly impossible to hold adjudi-

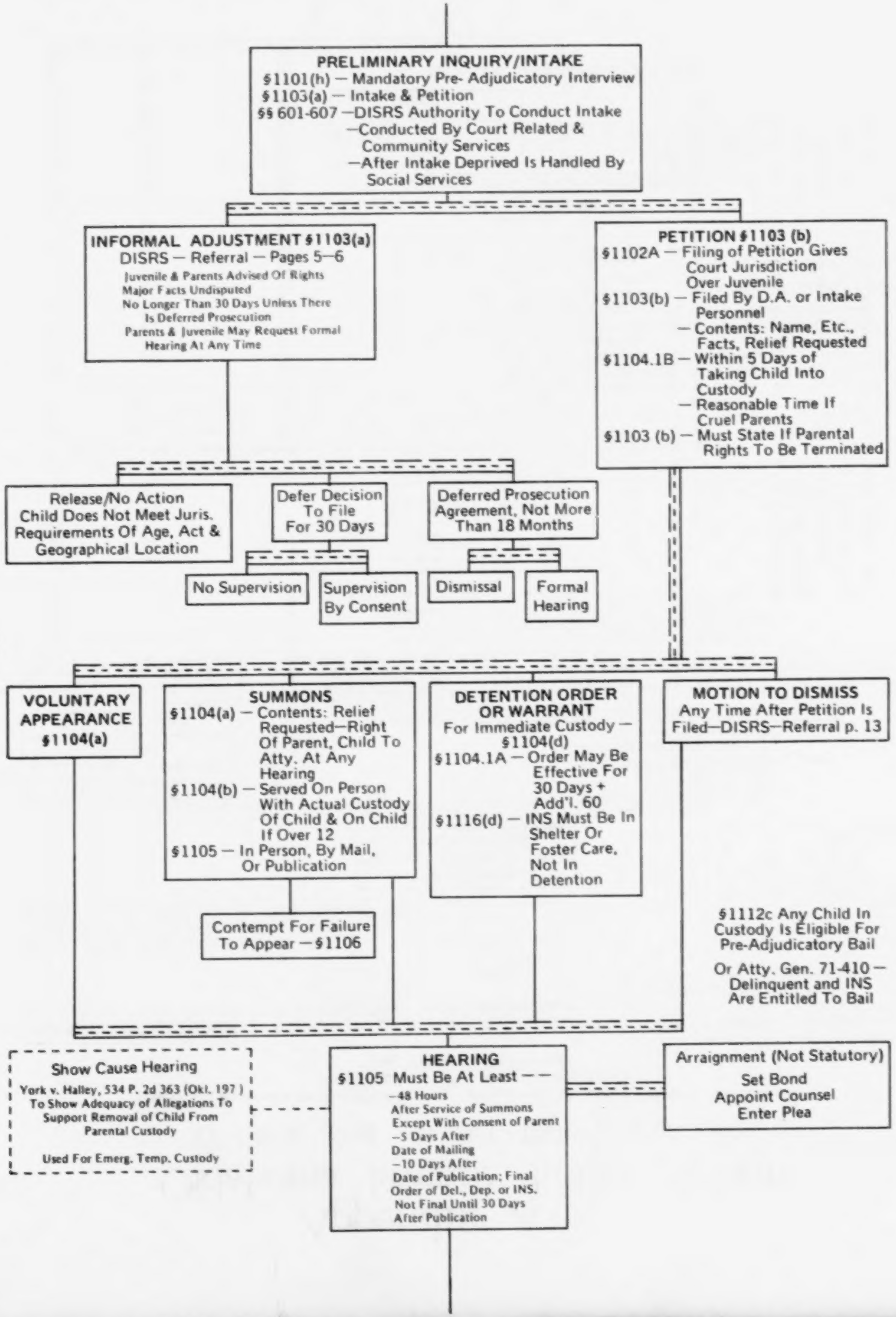
catory hearings within two or three days of the filing of a petition; however, the adjudicatory hearing would satisfy due process requirements, and a show cause hearing would not be necessary if the adjudicatory hearing date could be advanced.

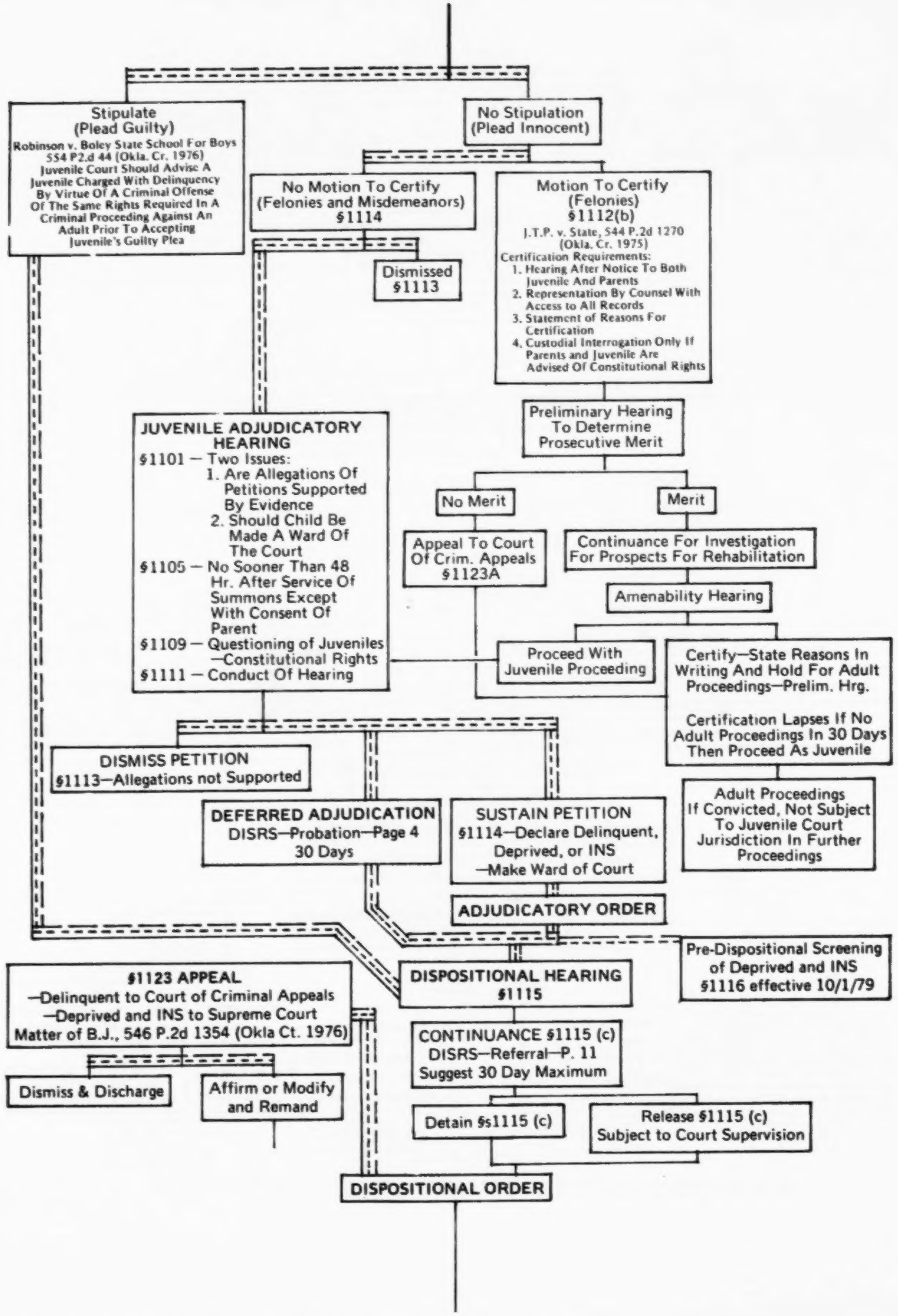
72. See e.g. National Advisory Committee on Criminal Justice Standards and Goals, Juvenile Justice and Delinquency Prevention (1976).
73. Not all parts of the tentative draft have been adopted.
74. 18 U.S.C. 1976 §§5001-5042.
75. 18 U.S.C. 1976 §5006(d).
76. U.S. v. Stoddard, 553 F.2d 1385 (App. D.C. 1977).
77. U.S. v. Doe, 556 F.2d 391 (C.A. Ohio 1977).

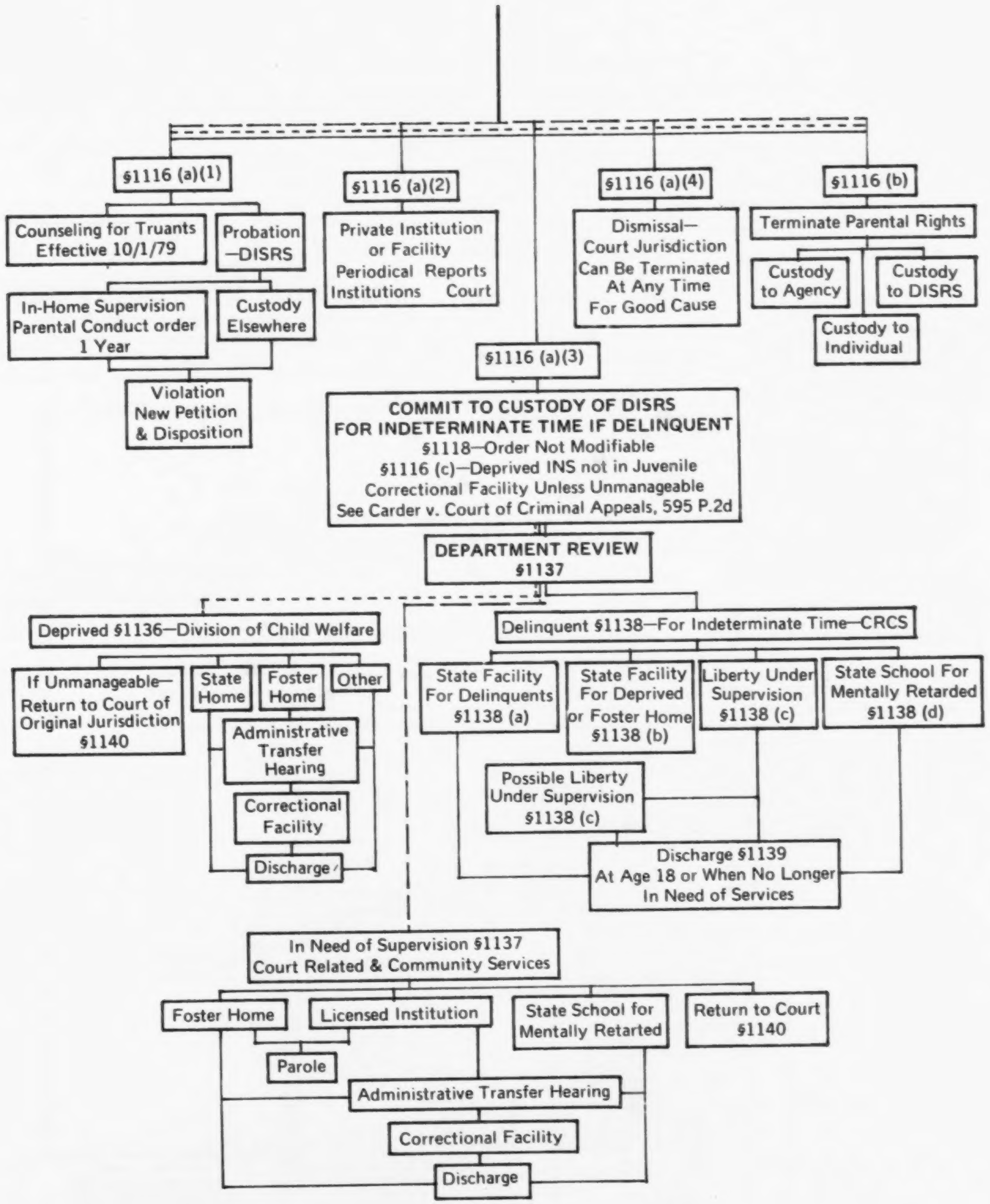
Appendix A
Oklahoma Juvenile Justice System
10 Okla. Stat. §§ 601-1506 (Supp. 1978)

Including Reference To The Department of Institutions, Social and Rehabilitative Services, Guidelines for Intake, Probation and Parole And Reference To Case Law

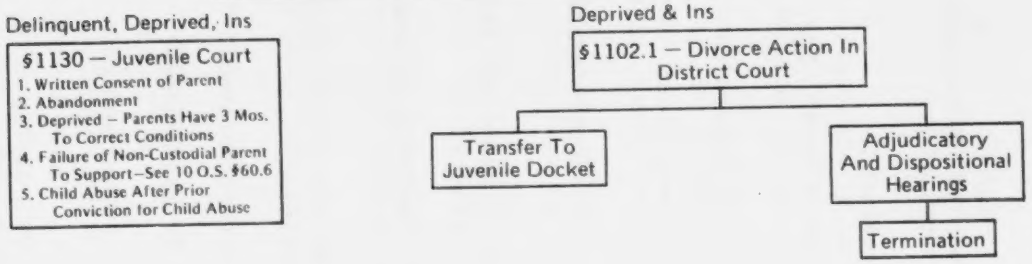

JUVENILE PROCEEDINGS
A Child is any person under 18 — §1101(a)
Jurisdiction Over Child Alleged/Adjudged
DISTRICT COURT — Jurisdiction Over Adults
CRIMINAL PROCEEDINGS
Key
Delinquent §1101(b); until Age 19 §1102A
Deprived § 1101(c); until Age 18 §1102A
In Need Of Supervision §1101(d); until Age 18 §1102A
INITIAL CONTACT
Behavior By Child, Parent Or Child And Parent
NON-CUSTODIAL
From Various Community Sources
CUSTODY
Usually By Police Or Welfare Department
Judicial Referral
Non-Judicial Referral
CUSTODY UNDER JUVENILE CODE
§1104.1B—Petition Within 5 Days Or Child Must Be Released
J.T.P. v. State, 544 P.2d 1270 (Okla. Cr. 1975) — A Child may not be detained any longer than necessary to take him before a judge who will explain and protect his rights.
CUSTODY WHERE PETITION
Alleges Cruelty By Parents
§1104.1C—Petition Within Reasonable Time
DISRS Guidelines—Referral p.12
Emer. Temp. Custody Order
Police Decision To Divert Or Deflect
Release With Written Promise To Appear §1107A
Immediate Appearance Before A Judge §1107 A & B
Immediate Admission To Detention Or Shelter — §1107A
§1107B—Immediate Report To Judge
—No Detention Beyond Next Judicial Day Without Court Order At Detention Hearing
§1107C—Age Limits, Time Limits, Separation From Adults
§1116d—INS—May Not Be In Detention Except For Safety of Runaway
§1108A
Private Home Under Court Supervision
Public Operated Facility
Facility Under Contract
Detention Hearing
Set Bond
Held
§1104.1 — 30 Days + 60 On Pre-Adjudicatory Detention
Released


PRELIMINARY INQUIRY/INTAKE
§1101(h) — Mandatory Pre- Adjudicatory Interview
§1103(a) — Intake & Petition
§§ 601-607 —DISRS Authority To Conduct Intake
—Conducted By Court Related & Community Services
—After Intake Deprived Is Handled By Social Services
INFORMAL ADJUSTMENT §1103(a)
DISRS — Referral — Pages 5—6
Juvenile & Parents Advised Of Rights
Major Facts Undisputed
No Longer Than 30 Days Unless There Is Deferred Prosecution
Parents & Juvenile May Request Formal Hearing At Any Time
PETITION §1103 (b)
§1102A — Filing of Petition Gives Court Jurisdiction Over Juvenile
§1103(b) — Filed By D.A. or Intake Personnel
— Contents: Name, Etc., Facts, Relief Requested
§1104.1B — Within 5 Days of Taking Child Into Custody
— Reasonable Time If Cruel Parents
§1103 (b) — Must State If Parental Rights To Be Terminated
Release/No Action Child Does Not Meet Juris. Requirements Of Age, Act & Geographical Location
Defer Decision To File For 30 Days
Deferred Prosecution Agreement, Not More Than 18 Months
No Supervision
Supervision By Consent
Dismissal
Formal Hearing
VOLUNTARY APPEARANCE §1104(a)
SUMMONS
§1104(a) — Contents: Relief Requested—Right Of Parent, Child To Atty. At Any Hearing
§1104(b) — Served On Person With Actual Custody Of Child & On Child If Over 12
§1105 — In Person, By Mail, Or Publication
DETENTION ORDER OR WARRANT
For Immediate Custody — §1104(d)
§1104.1A — Order May Be Effective For 30 Days + Add'l. 60
§1116(d) — INS Must Be In Shelter Or Foster Care, Not In Detention
MOTION TO DISMISS
Any Time After Petition Is Filed—DISRS—Referral p. 13
Contempt For Failure To Appear — §1106
§1112c Any Child In Custody Is Eligible For Pre-Adjudicatory Bail
Or Atty. Gen. 71-410 — Delinquent and INS Are Entitled To Bail
Show Cause Hearing
York v. Halley, 534 P. 2d 363 (Okl. 197) To Show Adequacy of Allegations To Support Removal of Child From Parental Custody
Used For Emerg. Temp. Custody
HEARING
§1105 Must Be At Least — —
—48 Hours After Service of Summons Except With Consent of Parent
—5 Days After Date of Mailing
—10 Days After Date of Publication; Final Order of Del., Dep. or INS. Not Final Until 30 Days After Publication
Arraignment (Not Statutory)
Set Bond
Appoint Counsel
Enter Plea


Stipulate
(Plead Guilty)
Robinson v. Boley State School For Boys
554 P2.d 44 (Okla. Cr. 1976)
Juvenile Court Should Advise A Juvenile Charged With Delinquency By Virtue Of A Criminal Offense Of The Same Rights Required In A Criminal Proceeding Against An Adult Prior To Accepting Juvenile's Guilty Plea
No Stipulation
(Plead Innocent)
No Motion To Certify
(Felonies and Misdemeanors)
§1114
Motion To Certify
(Felonies)
§1112(b)
J.T.P. v. State, 544 P.2d 1270
(Okla. Cr. 1975)
Certification Requirements:
1. Hearing After Notice To Both Juvenile And Parents
2. Representation By Counsel With Access to All Records
3. Statement of Reasons For Certification
4. Custodial Interrogation Only If Parents and Juvenile Are Advised Of Constitutional Rights
Dismissed
§1113
Preliminary Hearing
To Determine
Prosecutive Merit
JUVENILE ADJUDICATORY HEARING
§1101 — Two Issues:
1. Are Allegations Of Petitions Supported By Evidence
2. Should Child Be Made A Ward Of The Court
§1105 — No Sooner Than 48 Hr. After Service Of Summons Except With Consent Of Parent
§1109 — Questioning of Juveniles —Constitutional Rights
§1111 — Conduct Of Hearing
No Merit
Merit
Appeal To Court
Of Crim. Appeals
§1123A
Continuance For Investigation
For Prospects For Rehabilitation
Amenability Hearing
Proceed With
Juvenile Proceeding
Certify—State Reasons In Writing And Hold For Adult Proceedings—Prelim. Hrg.
Certification Lapses If No Adult Proceedings In 30 Days Then Proceed As Juvenile
Adult Proceedings
If Convicted, Not Subject To Juvenile Court Jurisdiction In Further Proceedings
DISMISS PETITION
§1113—Allegations not Supported
DEFERRED ADJUDICATION
DISRS—Probation—Page 4
30 Days
SUSTAIN PETITION
§1114—Declare Delinquent, Deprived, or INS
—Make Ward of Court
ADJUDICATORY ORDER
Pre-Dispositional Screening
of Deprived and INS
§1116 effective 10/1/79
DISPOSITIONAL HEARING
§1115
§1123 APPEAL
—Delinquent to Court of Criminal Appeals
—Deprived and INS to Supreme Court
Matter of B.J., 546 P.2d 1354 (Okla Ct. 1976)
CONTINUANCE §1115 (c)
DISRS—Referral—P. 11
Suggest 30 Day Maximum
Dismiss & Discharge
Affirm or Modify
and Remand
Detain §s1115 (c)
Release §1115 (c)
Subject to Court Supervision
DISPOSITIONAL ORDER

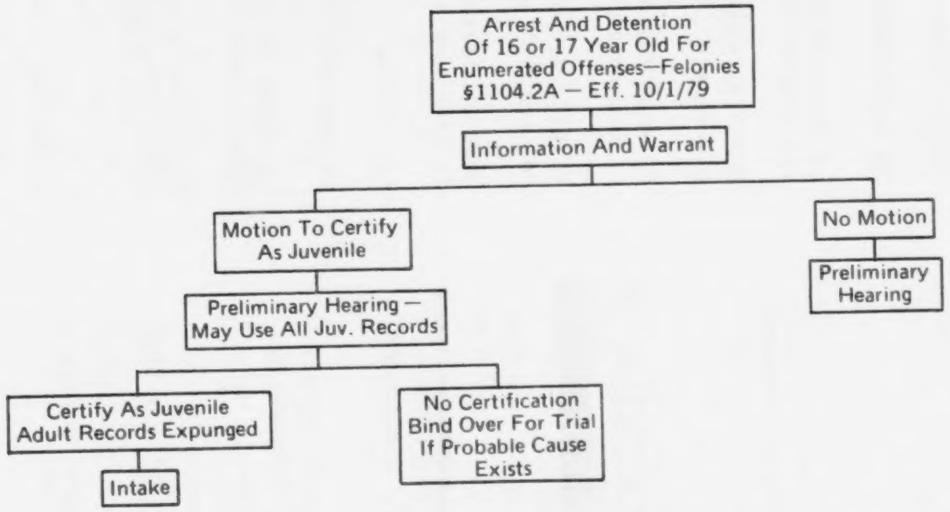

§1116 (a)(1)
Counseling for Truants Effective 10/1/79
Probation —DISRS
In-Home Supervision Parental Conduct order 1 Year
Custody Elsewhere
Violation New Petition & Disposition
§1116 (a)(2)
Private Institution or Facility Periodical Reports Institutions Court
§1116 (a)(4)
Dismissal— Court Jurisdiction Can Be Terminated At Any Time For Good Cause
§1116 (b)
Terminate Parental Rights
Custody to Agency
Custody to DISRS
Custody to Individual
§1116 (a)(3)
COMMIT TO CUSTODY OF DISRS FOR INDETERMINATE TIME IF DELINQUENT
§1118—Order Not Modifiable
§1116 (c)—Deprived INS not in Juvenile Correctional Facility Unless Unmanageable
See Carder v. Court of Criminal Appeals, 595 P.2d
DEPARTMENT REVIEW §1137
Deprived §1136—Division of Child Welfare
If Unmanageable— Return to Court of Original Jurisdiction §1140
State Home
Foster Home
Other
Administrative Transfer Hearing
Correctional Facility
Discharge
Delinquent §1138—For Indeterminate Time—CRCS
State Facility For Delinquents §1138 (a)
State Facility For Deprived or Foster Home §1138 (b)
Liberty Under Supervision §1138 (c)
State School For Mentally Retarded §1138 (d)
Possible Liberty Under Supervision §1138 (c)
Discharge §1139 At Age 18 or When No Longer In Need of Services
In Need of Supervision §1137 Court Related & Community Services
Foster Home
Licensed Institution
State School for Mentally Retarted
Return to Court §1140
Parole
Administrative Transfer Hearing
Correctional Facility
Discharge

TERMINATION OF PARENTAL RIGHTS

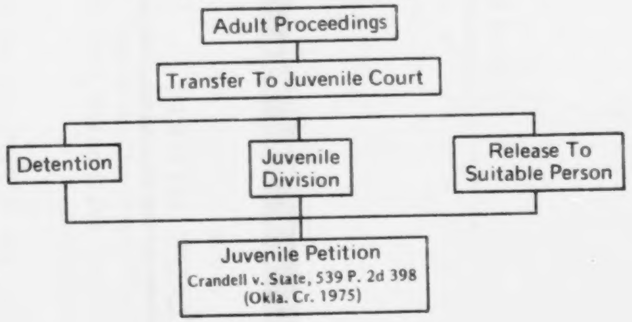

Delinquent, Deprived, Ins
§1130 — Juvenile Court
1. Written Consent of Parent
2. Abandonment
3. Deprived – Parents Have 3 Mos. To Correct Conditions
4. Failure of Non-Custodial Parent To Support–See 10 O.S. §60.6
5. Child Abuse After Prior Conviction for Child Abuse
Deprived & Ins
§1102.1 — Divorce Action In District Court
Transfer To Juvenile Docket
Adjudicatory And Dispositional Hearings
Termination

REVERSE CERTIFICATION

Adult To Juvenile


Arrest And Detention Of 16 or 17 Year Old For Enumerated Offenses—Felonies §1104.2A — Eff. 10/1/79
Information And Warrant
Motion To Certify As Juvenile
Preliminary Hearing — May Use All Juv. Records
Certify As Juvenile Adult Records Expunged
Intake
No Certification Bind Over For Trial If Probable Cause Exists
No Motion
Preliminary Hearing

TRANSFER §1112(a)


Adult Proceedings
Transfer To Juvenile Court
Detention
Juvenile Division
Release To Suitable Person
Juvenile Petition
Crandell v. State, 539 P. 2d 398 (Okla. Cr. 1975)

Appendix B

court worker

What kinds of kids are brought to court worker? (e.g., delinquent, status offender, dependent/neglected)

What are alternatives for each type of kid? (e.g., diversion (special agency), release to custody of parents, nonsecure placement, secure placement)

What are criteria? If no formal criteria, what factors are influential?

What is the average time which elapses before a detention hearing?

Who conducts detention hearing?

How often are children represented by counsel at detention and other court hearings?

What is the scope of investigation?

Is a recommendation made to prosecutor? (re: petition)

Is the recommendation usually followed?

Is recommendation to court followed about placement?

Does the child always get sent to court ordered placement? If not, why not?

Do some children get securely detained for lack of nonsecure placement alternatives?

If kids are diverted, can they be brought back on original charge at a later date?

Must children wait a long time before placement in programs after final disposition?

Are status offenders ever securely detained?

Is your office staff on-call 24 hours a day?

Is every child interviewed in person before a detention decision is made?

Do police always contact you immediately after a child is arrested (and/or detained)?

defense counsel

At what stage is the defense counsel's first contact with the youth?

Who makes the contact?

What kinds of kids? (status offenders?)

Are kids already in detention when defense counsel is contacted? For how long?

If so, have they been before a judge?

Are status offenders or dependent/neglected kids securely detained?

Have the children been adequately advised of their rights?

Does the judge generally place the kid in the least restrictive setting?

What factors seem to influence the judge's decision at pre-trial custody or disposition?

Are his decisions consistent?

Are kids ever placed in jail? Under what circumstances?

If defense counsel is a public defender, is there adequate staff?

Are kids detained according to formal criteria? If not, what factors seem to influence it? (e.g., socio-economic background)

Must children wait a long time before placement in programs after final disposition?

What is the role of defense counsel in disposition decision?

Note: This is a person with a lot of information so try to ask some general questions and let him talk. Try to verify the information you've gotten from others.

detention administrator

What kinds of kids come here? (Status offender, dependent/neglected, delinquent)

At what stage of the proceedings are they?

What is the average stay of pre-adjudicatory kids?

What is the average stay of post-adjudicatory kids?

Were all of the kids admitted ordered by the court or could they be on waiting lists for other facilities?

What % of kids detained could be safely released to a supervised nonsecure setting?

What % of kids are eventually found not guilty and/or released to a nonsecure setting?

Do you have educational, recreational, and counseling programs?

Is there medical care available?

judge

What's the average time which elapses between arrest and court appearance?

What is the average time that a child has been held in detention before he appears in court?

Are status offenders or abused/neglected children ever placed in secure detention?

What factors does the judge take into consideration when making the decision about pre-trial detention?

What alternatives are available? Who is sent where?

What kind of information is available to him? (e.g., prior record, sound investigation)

How much time elapses between arrest and adjudication? Between adjudication and disposition?

Are children always placed in the court-ordered placements?

Does the judge ever want detention or group homes?

Is a child ever placed in jail? Under what circumstances?

What is the scope of the pre-disposition investigation?

What dispositional alternatives are used in which cases? (dependent/neglected, status, delinquent)

What factors affect disposition?

If there is more than one juvenile court judge, is there a uniform basis for decision-making?

If a child is not transferred to a court-ordered placement, does the judge receive nature of this?

What percentage of children are represented by counsel?

What effect does representation have on the proceedings?

law enforcement

Are there written criteria, policies, etc. for arrest?

If no formal guidelines, what factors are considered? e.g., type of crime, previous record, attitude, race, ethnic background, socio-economic

Are status offenders ever detained/arrested?

What is the procedure for arrest?

How long is kid held at police station? Where is he held? What happens during this time?

Are there written criteria for diversion? If not, what are the actual criteria used?

When are kids advised of their right to counsel?

How are they advised of it?

Are parents advised?

Is a written waiver required?

Where is the child taken after police station? (If options include secure nonsecure custody, what are the factors which influence it?)

How long does it take for police to contact court after arresting a child (especially after office hours)?

prosecutor

Does he just handle juvenile matters?

What is prosecutor's first contact with the case?

What are criteria for filing a petition? (offense, history)

Who else has input into the decision?

Is there any contact with parents?

Is there plea bargaining?

Is there plea bargaining when a guilty plea is entered?

What is the scope of the investigation conducted by the prosecutor?

What role does the prosecutor play during the post adjudication and pre-disposition period?

Are most kids represented by counsel?

Do procedures tend to be different with kids not represented by counsel?

What does the petition contain? Notification of regrets and possible disposition

Is a kid likely to be in custody before a petition is filed? If so, for how long?

Once a prosecutor has decided not to file a petition and the youth has been diverted or has entered a consent decree, can the prosecutor change his mind and file a petition on the original charge? If so, how often does this happen?

Can a complaining witness appeal the prosecutor's decision not to file a petition?

blank page

A Review And Analysis Of The Juvenile Court Process In Arizona

—**Martin Willett**

page 74 **Definitions**
75 **Administration**
76 **The Juvenile Court Process**
83 **Arizona Juvenile Justice As Administered By the Counties**
105 **An Analysis Of the Relationship Between Arizona Juvenile Justice As Codified and Its Operational Administration**
106 **An Analysis Of the Relationship Of the Combined States System To Selected National Standards**
107 **Conclusions & Recommendations**

Definitions

A "child" is an individual under the age of eighteen years. (A.R.S. Sec. 8-201(5), 17A A.R.S. Juv. Ct. Rules of Proc., rule 1)

A "delinquent child" is a child who is adjudicated to have committed an act, which if committed by an adult would be a public offense, or any act that would constitute a public offense which could only be committed by a child including violation of any law or the failure to obey any lawful order of the Juvenile Court. (A.R.S. Sec. 8-201(8)(9)

An "incorrigible child" is a child adjudicated as one who refuses to obey the reasonable and proper orders or directions of his parent, guardian or custodian, and who is beyond the control of that person, or any child who is habitually truant from school, or is a runaway from his home or parent, guardian or custodian, or who habitually conducts himself in such a way as to injure or endanger the morals or health of himself or others. (A.R.S. Sec. 8-201(12))

Administration

jurisdiction

The Superior Court has exclusive original jurisdiction in all proceedings and matters affecting dependent, neglected, incorrigible or delinquent children, or children accused of crime, under the age of eighteen years. (A.R.S. const. Art. 6, Sec. 10). "Juvenile Court" is the juvenile division of the Superior Court when it is exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility. (A.R.S. Sec. 8-201(13), 8-202(A))

Jurisdiction of a child obtained by the juvenile court in a proceeding is retained by it for the purposes of implementing the orders made and filed in that proceeding until the child becomes twenty-one years of age, unless terminated by order of the court. (A.R.S. Sec. 8-202(D))

detention facility

The Board of Supervisors of each county is required to maintain a detention center separate, and apart from a jail or lock-up in which adults are confined where children alleged or found to be delinquent or incorrigible are detained before or after hearing. (A.R.S. Sec. 8-226(A) A.R.S. Const. Art. 22 Sec. 16.) The juvenile court is to supervise the detention center and may appoint a person of good moral character to be in charge of it. (A.R.S. Sec. 8-227(A))

The Juvenile Court Process

police investigation and referrals to juvenile court

The law enforcement officer having jurisdiction in the place in which an act of delinquency or incorrigibility is alleged to have occurred has the responsibility for the complete investigation surrounding the alleged commission of the act. (A.R.S. Sec. 8-224(A))

A written complaint of delinquent conduct may be filed in the juvenile court by an individual or agency. The complaint must be signed by the person responsible for its filing and set forth facts with sufficient clarity and specificity to reasonably apprise the court of the acts of the child. (17A A.R.S. Juvenile Court Rules of Procedure, rule 2(a)). Any law enforcement agency making a complaint is required to immediately notify the parents of the child that the complaint is being sent to Juvenile Court, however, failure to make such notification does not bar any proceeding in any court. (A.R.S. Sec. 8-228(B))

All complaints received by the court are referred to a juvenile probation officer who makes a record of it. (17A A.R.S. Juv. Ct. Rules of Proc., rule 2(a),(b))

When a juvenile probation officer receives a complaint he investigates the matter to determine whether the facts, if true, are sufficient to bring the child within the court's jurisdiction and whether they appear serious enough on their face to warrant some form of court action. (17A A.R.S., Juv. Ct. Rules of Proc., rule 2(b))

adjustment

A juvenile probation officer may adjust a complaint if it appears to him that from the facts the child is not within the court's jurisdiction or that the matter is not serious enough to warrant court action. To "adjust" a complaint means to handle it in such a way as to make the filing of a petition unnecessary. (17A A.R.S. Juv. Ct. Rules of Proc., rule 2(b))

Additionally, if a child has acknowledged his responsibility for a delinquent act and the probation officer has found, from the child's total circumstances, that court action is not necessary the child may be referred to other agencies or to the parents for corrective action, and the complaint adjusted. (17A A.R.S. Juv. Ct. Rules of Proc., rule 2(c)

detention

In addition to a written referral a child may be physically referred to a detention or shelter facility. (17A A.R.S. Juv. Ct. Rules of Proc., rule 3(a))

Any person who brings a child to a detention facility must make a report setting forth the reasons why the child should be detained. (17A A.R.S. Juv. Ct. Rules of Proc., rule 3(a))

Upon admission to detention, the probation officer is required to notify the child and his parents of the cause of admission and, further, to inform them of the time and place a detention hearing is to be held. A written record of the time and manner of such notification is required to be made. (17A A.R.S. Juv. Ct. Rules of Proc., rule 3(c))

A child may telephone his parents, guardian or custodian and counsel immediately after being admitted to a detention or shelter care facility and may be visited in private by his parents, guardian or custodian and counsel. After the initial visit, the child may be visited during normal visiting hours or by special appointment if required for preparation for any hearing. (17A A.R.S. Juv. Ct. Rules of Proc., rule 3(h) and (i))

It is unlawful to confine any minor under the age of eighteen years, accused or convicted of crime, in the same section of any jail, prison, apartment, cell or place of confinement in which adults charged with or convicted of a crime are held. (A.R.S. Sec. 8-226(B), A.R.S. Const. Art. 22 Sec. 1(b))

If a detained child by his conduct endangers or evidences that he may endanger the safety of other detained children, that child must be kept from contact with any other child. (A.R.S. Sec. 8-226(c))

filing petitions

Initiation of court action must be by a petition in writing, under oath. (17A A.R.S. Juv. Ct. Rules of Proc., rule 4(a), A.R.S. Sec. 8-221(2)) The county attorney is responsible for filing the petitions he deems necessary in the public interest, which allege delinquent behavior. The County Attorney may direct investigations of acts of alleged delinquent behavior. (A.R.S. Sec. 8-233(A)(1)(2))

The petition and notice of the court hearing is to be delivered to the charged youth over the age of fourteen years and the parents or guardian. (17A A.R.S. Juv. Ct. Rules of Proc., rule 5)

time limitations (detention)

No child may be held in detention for more than 24 hours, excluding Saturday, Sundays and holidays, unless a petition alleging his delinquent conduct has been filed. Thereafter, no child may be held longer than 24 hours excluding Saturdays, Sundays and holidays after the filing of the petition unless so ordered by the court after a detention hearing. If the detention hearing is not held within the time specified, the child must be released to the custody of his parents. (17A A.R.S. Juv. Ct. Rules of Proc., rule 3(d)(e))

hearing sequence

At any hearing other than with respect to transfer to another court for criminal prosecution, the juvenile court may handle all matters at one time or in phases, to wit: An advisory phase, a detention phase if necessary, an adjudicatory phase, a dispositional phase, or in any combination of phases. (17A A.R.S. Juv. Ct. Rules of Proc., rule 7)

referees

The presiding judge of the juvenile court may appoint referees to hear cases of delinquency and incorrigibility. They may sit on advisory, detention, adjudication and dispositional hearings. Qualifications for referees are at the discretion of the judge, however, if the case is contested the referee must have a law degree or be an attorney. (A.R.S. Sec. 8-231(A)(B)(C) The referee transmits written findings and recommendations to the judge, written notice and copies of which must be given to the parties to the proceeding. (A.R.S. Sec. 8-231(E))

Any party to a juvenile hearing may appeal from the recommendation of a referee. Written notice of appeal must be filed within seven working days after notice of the referees' recommendations are sent to the parties. An appeal is on the record of proceedings if such record includes a transcript. A new trial must be granted if no transcript of the proceedings was maintained. (A.R.S. Secs. 8-231.01, 8-231.02; 17A A.R.S. Juv. Ct. Rules of Proc., rule 8(d))

advisory hearing

After the petition is filed the child and the parents are notified to appear before the court. At this appearance the child and parents are advised of their right to counsel, including the right to be furnished counsel if they are indigent. Counsel may be waived by the child, if done so knowingly, intelligently and voluntarily. Waiver must be in writing or in the minutes of the court. In addition, the court must advise the parties of the child's right to remain silent, to call witnesses in the child's behalf and to have a contested hearing. (17A A.R.S. Juv. Ct. Rules of Proc., rule 6)

If the child denies the allegations of the petition, the court shall set the matter for an adjudication hearing; if the allegations are admitted, the court may proceed with the disposition hearing. (17A A.R.S. Juv. Ct. Rules of Proc., rule 6)

detention hearing

The detention hearing may be held without the presence of the child's parents or guardian if they cannot be found or fail to appear. (17A A.R.S. Juv. Ct. Rules of Proc., rule 3(g))

A child may be detained beyond 48 hours only if there is probable cause to believe that the child committed the acts alleged in the petition and there is reason to believe that:

A) The youth will not show up for the court hearing; or
B) The youth is likely to commit an injurious offense; or
C) The youth must be held for another jurisdiction; or
D) The interests of the child or public require custodial protection.
(17A A.R.S. Juv. Ct. Rules of Proc., rule 3(b))

The probable cause determination may be based upon the allegations in a verified petition, an affidavit properly executed or sworn testimony. (17A A.R.S. Juv. Ct. Rules of Proc., rule 3(f))

transfer for criminal prosecution (as an adult)

At any time prior to an adjudication hearing the juvenile probation officer or the county attorney may request a transfer hearing to determine if the child should be tried in the criminal court as an adult. (17A A.R.S. Juv. Ct. Rules of Proc., rule 12[1])

The transfer hearing must be conducted by a judge and five days notice must be given to all parties. (17A A.R.S. Juv. Ct. Rules of Proc., rule 13)

Prior to the transfer hearing the juvenile probation officer must conduct an investigation consisting of an evaluation of the child including social background, previous delinquent history and social records which shall be in a report made available to the court and all parties. (17A A.R.S. Juv. Ct. Rules of Proc., rule 12)

The court may transfer the action for criminal prosecution if the court finds probable cause and reasonable grounds to believe that:

1) The youth is not amenable to treatment or rehabilitation as a delinquent youth through available facilities; and
2) The youth is not commitable to an institution for the mentally deficient, mentally defective or mentally ill; and
3) The safety or interest of the public requires that the child be transferred for criminal prosecution.

At the conclusion of the hearing, the court must determine that probable cause exists, that the alleged offense has been committed, and that the youth committed the offense alleged. If transferred from juvenile court, the child is transferred to the appropriate law enforcement agency. If the case is not transferred, the judge may proceed to hear the case or assign it to another judge or a referee. (17A A.R.S. Juv. Ct. Rules of Proc., rule 14(b),(d))

---

[1] In Pima County a transfer hearing must be scheduled within 15 days of the filing of the petition if the child is detained and within 30 days if the child is not detained. (Local Rules of Procedure for Pima County Juvenile Court, rule XII.)

adjudication[2]

The conduct of the adjudication is to be as informal as the requirements of due process and fairness permit. The testimony of witnesses is to be taken, however, and the child cannot be compelled to be a witness. (17A A.R.S. Juv. Ct. Rules of Proc., rule 7)

No extra judicial statement to a peace officer or court officer by the child may be admitted into evidence in juvenile court over objection unless it is demonstrated to the satisfaction of the court that: The statement was voluntary and that the child was intelligently informed as to his right to be silent and to be represented by counsel. (17A A.R.S. Juv. Ct. Rules of Proc., rule 18) The burdens of proof in juvenile proceedings are: 1) beyond a reasonable doubt, as to a delinquency matter involving criminal offenses and incorrigibility; and 2) by preponderance of the evidence, as to all other types of actions. (17A A.R.S. Juv. Ct. Rules of Proc., rule 17)

At the adjudication hearing the child is asked to deny or affirm the charges against him. If the allegations are denied it is a contested case and a proceeding similar to a civil action before the court sitting without a jury takes place.

If the child admits the allegations the court may hear evidence to corroborate the admissions of the child. If the court finds that the facts alleged in the petition are true the child is adjudged delinquent. If the facts alleged in the petition are not proved the case is dismissed. (17A A.R.S. Juv. Ct. Rules of Proc., rule 7)

dispositional phase[3]

When the court makes a finding that a child is delinquent, the court may make a disposition of the matter concerning the child after the adjudication hearing or may set the matter for a dispositional hearing. The court may assign the disposition to another judge, court commissioner or referee. (17A A.R.S. Juv. Ct. Rules of Proc., rule 8(a)) Prior to the dispositional hearing the court may direct the juvenile probation officer to make an investigation and report of any circumstances of interest to the court. This report must be made available to all parties. The court may order the child to undergo physical, psychiatric and psychological examinations. (17A A.R.S. Juv. Ct. Rules of Proc., rule 9(a),(c)) At the close of the dispositional phase, the court makes its finding by minute entry or written order. (17A A.R.S. Juv. Ct. Rules of Proc., rule 8 (a),(b))

---

[2] In Pima County the date set for an adjudication hearing shall be no later than 15 days from the filing of the petition if the child is detained. If he is not detained the date set for hearing must be no later than 30 days from the filing of the petition. (Local Rules of Procedure for the Pima County Juvenile Court, rule V)

[3] In Pima County the date of the dispositional hearing must be set within 15 days from adjudication if the child is detained and within 30 days if he is not. (Local Rules of Procedure for the Pima County Juvenile Court, rule VI)

dispositional options

After receiving and considering the evidence on the proper disposition of the case, the court may enter judgment as follows:

1. It may award a delinquent child:
   - (a) To the care of his parents, subject to supervision of a probation department.
   - (b) To a probation department, subject to such conditions as the court may impose.
   - (c) To a reputable citizen of good moral character, subject to the supervision of a probation officer.
   - (d) To the Department of Corrections without further directions as to placement by that department. (Neither a child under the age of eight years nor an incorrigible child may be awarded to the State Department of Corrections. (A.R.S. 8-244(A))
   - (e) To maternal or paternal relatives, subject to the supervision of a probation department.

   (A.R.S. Sec. 8-241(A)(2))

   In addition, the court may order a delinquent child to make full or partial restitution to the victim of the offense and/or to pay a reasonable monetary penalty. Either of these dispositions may be satisfied by a lump sum or installment payments by the youth or by a program of work. (A.R.S. Sec. 8-241(C),(D))

2. It may award an incorrigible child:
   - (a) To the care of his parents, subject to the supervision of a probation department.
   - (b) To the protective supervision of a probation department, subject to such conditions as the court may impose.
   - (c) To a reputable citizen of good moral character, subject to the supervision of a probation department.
   - (d) To a public or private agency, subject to the supervision of a probation department.
   - (e) To maternal or paternal relatives, subject to the supervision of a probation department.

   (A.R.S. Sec. 8-241(A)(3))

If a child adjudged to be delinquent or incorrigible has evidenced signs of mental illness or mental retardation the court shall order a study of the child. If mental illness exists the child will be committed to the appropriate institution for the mentally ill, if mentally retarded the child is assigned to the Department of Economic Security. (A.R.S. Sec. 8-242)

appeal

Any aggrieved party may appeal from a final order of the juvenile court, but such an appeal must be taken within fifteen days after the final order is entered in the juvenile court minutes. The appeal is made to the Arizona Court of Appeals and the name of the child must not appear in the record of appeal. (A.R.S. Sec. 8-236(A); 17A Juv. Ct. Rules of Proc., rules 24, 25(a))

continuing jurisdiction

Once jurisdiction has been acquired by the juvenile court of a child, it shall continue until the child's twenty-first birthday, unless sooner discharged pursuant to law. When a child is committed to the Department of Corrections, however, control over the child lies with the Department of Corrections until the child is discharged or his twenty-first birthday. (A.R.S. 8-246)

Arizona Juvenile Justice As Administered By The Counties

Two counties, one characterized as urban, the other rural, were studied in an effort to learn how the system is administered on a day-to-day basis. The studies are based primarily upon interviews with officials in the juvenile system and available statistical information. Interviews were conducted with juvenile court administrators, judges, referees, detention facility staff and administrators, intake officers, probation officers, juvenile defense attorneys, prosecutors from the County Attorney's Office, police officers, and coordinators of outside juvenile services agencies. All those interviewed were quite cooperative in providing both information and candid opinions.

maricopa county

Maricopa County was chosen to be included within this study to represent the urban counties of Arizona. Several factors were considered in making this selection:

1) It supports the largest juvenile population (399,677).

2) It had the highest number of juvenile arrests in 1978 (17,434).

3) Its youth represent approximately 70% of Department of Corrections population.

4) The detention center has requested a one hundred bed addition to its facility.

5) It has adopted Local Rules of Juvenile Court Procedure.

6) It maintains a highly complex juvenile court system.[4]

Maricopa County is typical in that it experiences difficulties inherent in dealing with a large population and unique in that it is the most populous area in the state that is essentially rural. Maricopa County may well provide an illustration of what other Arizona counties will encounter as their population increases.

---

[4] Statistical data from: Preliminary Draft of the Arizona Justice Plan of 1980, Arizona State Justice Planning Agency.

OPERATIONAL SYSTEM

Referrals to the Juvenile Court

Juvenile complaints/referrals are made to the Maricopa County Juvenile Court Center located in Phoenix, Arizona. The Center operates under and for Juvenile Court, Superior Court of Arizona and has original and exclusive jurisdiction over all delinquent, incorrigible and dependent children under the age of eighteen years.

Referral is made to the juvenile court by the filing of a form which requires basic information about the youth, particulars of the alleged offense or conduct and the signature of the individual responsible for the filing. The form is standardized and is used throughout Arizona for all classes of juvenile cases. The complaint may be forwarded to the court or the youth may be taken to the court center and a complaint filed. Law enforcement agencies are the major source of juvenile referrals although a small number of referrals come from schools, parents, guardians, custodians, private business, agencies and juveniles who self-refer. The court received 18,681 referrals in 1978[5] and it is estimated that of those approximately 10% were for incorrigible actions.

Police Practices[6]

Juvenile cases are not assigned to a particular officer or officers. Cases are dealt with by whichever officer encounters them during the course of their regular duties. They are brought to the attention of the police by numerous sources. Schools normally contact the police when a criminal offense occurs. In cases of incorrigibility, parents are responsible for a large number of reports being filed on runaways each year. When a youth is encountered in the field, procedures for interrogation and investigation are identical to those utilized in adult cases. When an officer believes from the initial contact with a youth that probable cause exists that an offense has been committed and that the youth is responsible, he has the option of diverting the youth or arresting and filing a complaint. This decision is governed by written criteria in the form of "operation orders" issued by the Phoenix Police Department. They describe in detail which juveniles are to be arrested and which are to only receive a warning. They are lengthy and cover a very large number of possible situations. The field officers carry these guides with them and refer to them when necessary. The policy contained in them is to release whenever possible. Generally, factors which affect a decision to arrest include: the seriousness of the offense, whether the parents are available, the attitude of the parents and the youth, the existence of an outstanding warrant, and whether it is a repeat offense.

---

[5] Source: Preliminary End of the Year Report, 1978, Maricopa County Juvenile Court Center.

[6] This description is based upon procedures utilized by the City of Phoenix Police Department, the largest municipal law enforcement agency in the State of Arizona.

When the police determine that diversion is appropriate the youth is issued a warning and then released. The parents are usually contacted when a delinquency offense is involved, but not in incorrigible cases. No follow up is made by the police on warnings issued. The police do not make referrals to outside agencies in delinquency cases as a means of diversion. They do, however, make such referrals in incorrigible cases (Boys Club, shelter care centers like Tumbleweed, counseling agencies, etc.) This is done in the form of a suggestion only. The actual referral must be voluntary on the part of the youth.

When a police officer decides to arrest a youth the procedure is identical to that used in adult criminal cases except that the youth's parents are contacted. This is accomplished by telephone when possible or by personal contact at the youth's residence. A "Miranda" warning is given to the youth, however, usually no explanation of the child's rights is given to the parents. Incorrigibles are not technically arrested, however, they are detained and transported to the detention center.

Written procedures exist for police to use in determining which youth are to be physically referred to the court for detention and which cases are forwarded to the court by way of a written complaint alone. Approximately 25% of all referrals are physical; the youth who have committed highly serious offenses are always physically referred. The other remaining 75% are paper. Types of offenses which tend most frequently to be the subject of physical referral include substance abuse, assault, battery, shoplifting, burglary, and any incident in which the youth's attitude gives evidence of a propensity toward the further commission of violent acts. Incorrigibles[7] and other status offenders are, in certain cases, physically detained though the former must be "officially referred" by the parents to gain admittance to the detention facility.

After arrest the youth is many times taken to the police station where investigation, paper work, or parental notification may be undertaken. The length of time at the station varies with each case, though, according to police, it must be "reasonable." It is estimated that the average time between police arrest and arrival at the detention facility is two hours and that the longest time is ten hours. If not released as a result of further investigation, juveniles are always taken directly to the detention center by the police.

Juvenile Detention Facility

The Maricopa County Juvenile Detention Center is located adjacent to the Juvenile Court and Probation Department. It receives both female and male youth involved in all types of juvenile cases. Delinquents and incorrigibles are all securely detained here and are not separated on the basis of these classifications. Approximately twenty-five persons, including intake officers, administrators, controllers, and supervisors are employed at the facility at any one time. It operates and is on call 24 hours a day with three eight hour staff shifts daily. Its average (mean) daily population in 1978 was 102.[8]

---

[7] The number of physical referrals of runaways is substantial.

Detained youth are divided within the facility into seven distinct units. Each unit services the needs of a particular group of referrals. The units graduate from the most restrictive, which holds recently admitted youth, to the lesser restrictive units. Youth generally strive to progress to the less restrictive units which enjoy increased privileges. Normally, the ratio between staff supervisors and youth is one to eight. When overpopulation is experienced the ratio increases to one to ten.

Services offered at the Center include medical care 24 hours a day,[9] individual and group counseling, recreational facilities and schooling. The school operates five days a week and offers classes emphasizing social and practical skills. The school at which a youth may be already enrolled is contacted, if possible, and some youth are able to receive credit for instruction received in the Center. Youth may also complete work aimed at obtaining a GED.

Behavior of detained youth is controlled primarily through a privilege system. Youth can be prevented from attending school, participating in activities and utilizing recreational facilities. "Total isolation" in the strict sense of the word is not employed. Instead, "confinement"is used whereby the youth is physically separated from other juveniles through the plexiglass confinement room; there is sight and sound contact with staff and other detained juveniles. The length of stay in confinement varies, but is typically a 24 hour period. Staff report that such confinement is usually a last resort employed against those youths who prove to be of danger to the other juveniles. In a very few cases youths are transferred from the Juvenile Detention Center to the Maricopa County jail, due to their complete unmanageability by the detention staff. These youths allegedly are not placed with adults at any time while at the jail. Such youths are characterized by age (close to eighteen), size (large and powerful), attitude (not willing to accept any directon), and conduct (repeated attacks on staff). Written criteria and a staff review board govern all disciplinary actions.[10]

---

[8] Source: Maricopa County Juvenile Court Center Preliminary End of the Year Report, 1978.

[9] On the fourth day of detention all youth are given a complete medical and dental examination.

[10] Detention staff may, however, of their own initiative, file a complaint against a youth who has assaulted them.

Detention Intake

Of those youths physically referred to the detention facility in 1978 70.6% were admitted.[11] Written criteria exist in the form of a departmental directive for determining which youths are to be detained, a portion of which follows:

I. GENERAL

It is the position of the Maricopa County Juvenile Court that the detention of a juvenile, especially when not needed or when a more appropriate service (including home) is available, is most likely to cause, extend, or solidify a juvenile's delinquent identification. Consequently, when used inappropriately, detention must be regarded as causative rather than ameliorative of delinquent behavior. Additionally, unnecessary detention of juveniles is a waste, not only of very young lives, but of tax dollars.

The Maricopa County Juvenile Court recognizes its responsibility in the protection of the public from assaultive and other dangerous acts. Our goal is to detain only those juveniles who require short term lock-up. The following criteria must be present in order to detain a juvenile. Probation officers have the option not to detain a juvenile that meets the criteria, however, a juvenile may not be admitted to detention unless at least one of the following criteria is appropriate.

II. CRITERIA FOR JUVENILE ALLEGED TO BE DELINQUENT

A. "will not be present at any hearing" or cite-in.
  1. A juvenile who has had a warrant issued for failure to appear.
  2. A juvenile who has failed to appear for a cite-in involving an alleged felony.

B. 1. "likely to commit an offense (physically) injurious to himself."
    a. A juvenile who threatens suicide if not detained.
    b. A juvenile having a history of suicide attempts and in the probations officer's judgement, is likely to try again.
  2. "likely to commit an offense injurious to others."
    a. Charged with an offense alleging bodily injury.
    b. Charged with an offense involving a weapon.

---

[11] The number of children admitted to detention in 1978 was 3,420. Maricopa County Juvenile Court Center Preliminary End of the Year Report, 1978.

C. "Held for another jurisdiction." Includes State wards, as well as juveniles coming from other geographical jurisdictions.

D. 1. "Interest of the child requires custodial protection."
   - a. A juvenile may be detained if the probation officer determines that the juvenile is likely to incur serious bodily harm (i.e.: 1. A juvenile who in the judgement of a probation officer, is emotionally incapacitated as caused by a drug overdose, liquor, etc. or; 2. A threat of harm is made towards said juvenile).

2. "Interest of the public requires custodial protection."
   - a. Limited to a juvenile charged with a felony involving a victim.

III. CRITERIA FOR JUVENILE ALLEGED TO BE INCORRIGIBLE

By order of the Supreme Court of Arizona, it is illegal to detain any incorrigible child at the Maricopa County Juvenile Detention Facility unless there are reasonable grounds to believe that:

A. The juvenile "will not be present at any hearing." This is defined as a juvenile who has had a warrant issued for failure to appear.

B. The juvenile is "likely to commit an offense (physically) injurious to himself." This is defined as a juvenile:
1. Charged with an incorrigible offense which resulted in, or is likely to result in bodily injury to others.

D. "Interest of the juvenile requires custodial protection." Defined as:
1. A juvenile who, if not detained, is likely to incur serious bodily harm.

We recognize that problems exist within the families of the incorrigible children, and that those problems can oftentimes be best worked upon if all parties are separated for a short time. However, this need in itself does not provide legal grounds for the detention of an incorrigible child. In those instances where detention of the child would be considered illegal, we will assist the family in locating a mutually acceptable temporary placement with relatives or friends pending a future appointment with the Family Crisis Unit.[12]

---

[12] Source: Maricopa County Juvenile Court Center Departmental Directive #136, issued May 1978.

Probation officers, it is reported, are required to strictly adhere to the criteria and must record which criteria are applicable on the intake form. Additionally, they must defend their judgement at the ensuing detention hearing.

Typically, the procedure for physical referral and intake is as follows: The complaintant arrives at the facility with the youth and the referral form is completed. The form is given to a "controller" who then contacts an intake officer. A personal search is then conducted which lasts approximately five minutes. Staff explained that this "strip search" is made to insure that the youth has no immediate medical problems including substance abuse. If the youth appears to have medical problems, the police officer must transport him to the hospital for treatment before he can be returned to the detention facility. Otherwise, a screening officer then makes a decision whether to detain based upon referral data, the complaint and sometimes an interview with the youth.[13] If an interview is held the youth is provided with an explanation of his rights. During this screening process a standardized intake form is completed, which provides identifying, referral and interview data, as well as the detailed explanation of the detention recommendation made by the officer. Space is also provided to record future procedural steps as they are completed.

A follow-up contact to the parents is always made, either to release the youth into their custody if detention is denied, or to request that they appear for an interview within the next 24 hours if the child is admitted. In the case of incorrigibles who are referred, the parents must be contacted in order to formally refer them to the facility. Police may not perform this function. The detention facility and the police have an agreement, however, that the police may bring the child to the facility and the parents contacted afterward. When parents cannot be notified "provisional intake" is put into effect until they can be reached. Parental contact is accomplished by telephone and if the youth wishes to speak with them he may. If a household has no telephone a police officer is dispatched to deliver a communication.

During the course of parental interviews additional information about the youth and his home environment is obtained and the parents are advised of the child's rights, the nature and possible consequence of the allegations, and the nature of the juvenile court system. Parents are also invited to fill out a financial statement if appointed counsel is desired. Occasionally, youth will be released after an interview with the parents, even though an initial decision to detain had been made. This results from a showing by the parents that they are willing to control the youth and that the youth is normally responsive to their supervision.

Relatively few alternatives to temporary secure detention exist in comparison to the number of youth referred who, conceivably, could be released to a less restrictive setting. It is estimated that approximately 30% of those youth presently referred could safely be released to a supervised non-secure environment. Typically, these are youth who need not be detained but who cannot return home for one reason or another. Alternative which are available include Pre-Hab of Mesa (incorrigibles), Family Villas (incorrigibles), Tumbleweed (runaways), Department of Economic Security shelter care, foster homes and local relatives. Normally transfer to these settings can be accomplished quickly. Presently no residential programs exist for substance abusers. No system of bail exists, however, written conditions of release are employed in certain cases in an attempt to return a youth to his home. Usually, under this system a youth must agree not to leave the house without the accompaniment of one of his parents, and the parents have expressed a readiness to supervise the youth's activities.

---

[13] No interview is conducted if a serious offense is involved or available data strongly indicates that detention is appropriate.

Complaint Adjustment

A complaint may be diverted in a variety of ways. Cases of incorrigibility may be referred to the Crisis Intervention Unit of the juvenile court for counseling.[14] When this occurs no formal complaint is prepared and it is labeled a "non-complaint." A case may be "referred out"[15] to agencies including State Department of Corrections, child protective services of the Department of Economic Security and the Maricopa County Youth Services Bureau. A "record only"[16] may be designated on referrals that are for children under the age of ten, or first offenses which are misdemeanor charges, excepting assault/battery. It may also be used for non-delinquent offenses. The intake officer most often adjusts, however, by merely warning the youth and releasing to his parents.[17] Factors which may be considered by an intake officer in deciding whether to adjust include whether the facts of the case can be proven, the seriousness of the offense, the stability of the youth, referral history, family situation and whether the youth is employed or going to school. Probation officers sometimes impose special conditions in addition to a stern warning when adjusting a complaint. Typically, they may involve some type of contact with and restitution to the victim. Probation officers also "hold" complaints with the option of filing a petition at a later date. This option is exercised when the youth fails to meet the conditions of an informal probation imposed upon him. (Conditions may include "staying out of trouble", going to school, acquiring employment and checking in periodically with the probation officer.) It is estimated that it becomes necessary to file petitions at a later date in only

---

[14] The number of such referrals in 1978 was 333 (1.8%). Source: Maricopa County Juvenile Court Preliminary End of Year Report, 1978.

[15] The number "referred out" in 1978 was 594 (3.2%). Source: Maricopa County Juvenile Court Preliminary End of Year Report, 1978.

[16] The number given a "record only" in 1978 was 449 (2.4%). Source: Maricopa County Juvenile Court Preliminary End of Year Report, 1978.

[17] The number of referrals adjusted in this manner in 1978 was 9,093 (47.7% of total referrals). Source: Maricopa County Juvenile Court Preliminary End of the Year Report, 1978.

10% to 20% of the cases in which this procedure is utilized. The most frequent length of holding complaints is forty-five days.

Filing of Petitions

A prosecuting attorney[18] of the Maricopa County Attorney's Office files both delinquency and incorrigibility petitions.[19] In the case of detained youth this occurs within 24 hours of being admitted to temporary custody excluding Saturdays, Sundays and holidays. If a petition is not filed within this time period the youth is released. In cases of released youth the time of filing varies greatly and may occur in some instances several months after the complaint is made.

Decisions to file delinquency petitions are based primarily on: 1) the prosecutional merit of the case, 2) likelihood of conviction, and 3) police and probation officer recommendations if any are made. Occasionally a youth who is within a few weeks of turning eighteen years of age will be "referred out" and criminal charges will be brought at a later date. Incorrigibility petitions are usually filed at the request of parents or guardians and are based upon a statement by them that the child has refused to obey a reasonable order. Complainants have no formal recourse if the county attorney decides not to file a petition.

Advisory/Detention Hearings

Detention hearings also serve as advisory hearings for detained youth.[20] They are held within 48 hours from the time the youth is admitted to temporary custody, excluding Saturday, Sunday and holidays. Failure to hold the detention hearing within this time frame results in the release of the child. Parents are requested to attend the hearing. The advisory consists of parents and children receiving a copy of the petition and a citation to appear at the adjudication hearing. In addition, the child's rights, the allegations charged, the court system and possible dispositional consequences are explained. Counsel is appointed at this time, except on rare occasions when he is appointed earlier.[21]

When a youth is detained, in addition to advising the parties, a determination is made whether detention should be continued. The hearing is usually conducted by a referee and is somewhat informal procedurally. Unsworn testimony is taken from the probation officer, any specialists involved, the child and the parents. Outside witnesses are called infrequently.[22] Before the child can be ordered to remain in custody probable cause must be established. Police reports and the verified petition usually serve as the basis of this showing. In addition to the necessary showing of probable cause, there must be reason to believe that the following factors are considered in establishing the criteria necessary to detain:

---

[18] County prosecutors are located at the Maricopa County Juvenile Court Center and handle only juvenile cases.

[19] Petitions consist of a standardized form containing identifying information about the child and parents, particulars of the alleged offense, and a verified signature of the petitioner.

[20] Advisory hearings are also utilized for released youth, but are held approximately five days after the complaint is filed.

[21] Early appointment may occur when a highly serious offense is involved.

1) The youth will not show up for the court hearing; or
2) The youth is likely to commit an injurious offense; or
3) The youth must be held for another jurisdiction; or
4) The interests of the child or public require custodial protection.
(17A A.R.S. Juv. Ct. Rules of Proc., rule 3(b))
The seriousness of the offense, referral record, family situation, attendance at the hearing by the parents and their willingness to accept supervision of the child, the general attitude of the youth toward the court, family and society, whether the youth is a "gang" member, whether, if a female, there is a history of physically harmful sexual encounters, and whether there is a record of suicidal tendencies. If a decision is made to detain it is reviewed every ten days to determine if it is still appropriate.

Prior to Adjudication

Initial contact with a youth by the court appointed defense attorney[23] occurs one or two days after the advisory/detention hearing. The attorney interviews the youth at that time. Though juveniles have been advised of their rights prior to this meeting, defense counsel sometimes find that juveniles do not fully comprehend the court process. Because counsel was not present at the detention hearing it is routinely appealed and a second hearing conducted by a judge is held. This appeal is sometimes heard up to eight days after the initial detention hearing.

Prior to adjudication both the prosecutor and the probation officer conduct investigations. The prosecutor's office employs an investigator who gathers information used in preparing the case. The police are also relied upon in many cases to supplement their initial reports. A complete social history is prepared by the probation officer and is on file prior to adjudication. It is not reviewed before the hearing by the judge or referee, however, unless it is known in advance that the youth is going to admit the allegations and waive a separate disposition hearing.

---

[22] It is estimated that outside witnesses are called to testify in detention hearings less than ten percent of the time.

[23] Indigency must be claimed by the youth or parents by submitting a financial statement of the parent's income to the Finance Department of the Juvenile Court who then determines if counsel may be appointed. It is estimated that between 90% and 95% of all contested cases are handled by the Public Defender's office. The Public Defender's office is located in the Maricopa County Juvenile Court Center and employs three attorneys who handle juvenile cases of all types.

Transfer Hearings

Requests for transfer hearings are governed by written criteria and are made by the prosecutor and, in rare instances, the probation officer.[24] Procedurally they are highly formal and are comparable to a preliminary hearing in a criminal case. A judge always presides and youths are always represented by counsel. The determination of probable cause is meticulously sought. If it is established, the second part of the test[25] is approached as a weighing of the need to protect the community, against an interest in doing what is best for the child. Factors considered in determining that a youth is not amenable to treatment in a juvenile facility include: The seriousness of the offense, whether adult accomplices were involved, the youth's referral record, social history, family situation, past therapy and age. Factors considered in determining whether the safety or interest of the public requires transfer include: An overall impression of a youth, his attitude, maturity level, whether the family environment is detrimental, whether the youth has evidenced violent tendencies, and the seriousness of the offense. An extensive report is prepared by the probation officer to aid in these determinations. If transfer is ordered the youth is taken to the Maricopa County jail.

Adjudication

Adjudication is normally held thirty days after referral in detention cases and two or three months after referral for non-detained youth. It may be conducted by a judge or referee, usually the same official who had previously conducted the advisory/detention hearing in the case. Youth are almost always represented by an attorney. The court strives to insure that counsel has been retained or appointed in order that the adjudication proceeds smoothly and properly. The procedure is somewhat formal, though generally less so than in an adult trial. The mechanics of the procedural format are laid out in writing in the form of a "bench book."

Youths frequently admit the allegations of the petition and it is estimated that only 25% of all referrals are contested. Before accepting admissions the court normally makes inquiries to insure that the child is aware of his rights and that the admission is made knowingly and intelligently. Plea bargaining in delinquency cases, excluding transfer, is used extensively. It is estimated that in 98% of all contested cases plea bargaining is negotiated and 80% are ultimately bargained.

---

[24] It is estimated that probation officers request transfer hearings less than 10% of the time.

[25] In addition to probable cause, it must be determined that: 1) The youth is not amenable to treatment or rehabilitation as a delinquent youth through available facilities, and 2) The youth is not commitable to an institution for the mentally deficient, mentally defective or mentally ill; and 3) The safety or interest of the public requires that the child be transferred for criminal prosecution.

The youths and parents are routinely advised by the court of their right to appeal the findings and recommendations of referees. Approximately 50% of referee adjudications are appealed and of those about 10% are overturned.

Disposition

The time set for disposition hearings varies greatly. The hearing may be waived by the defense attorney and handled at the adjudication, or it may be set for up to eight weeks after the adjudication. The hearing may be postponed for several reasons: 1) dispositions are not ordered until a desired placement in a residential program has been arranged. This usually takes from six to eight weeks. 2) special examinations or evaluations which require a substantial length of time may be ordered prior to disposition. 3) disposition may be delayed in order to place the youth in a situation similar to "conditional release" whereby the youth is supervised by the probation officer in an attempt to modify behavior. This action is taken frequently in the case of first offenders.

Disposition hearings are somewhat informal, however, public defenders are almost always present. Their role is essentially to speak for the youth and to suggest alternatives to the recommended disposition. The youth and his parents are allowed to make statements. Prosecutors generally attend these hearings only in serious or repeat offender cases. In making a disposition decision, the judge or referee has at his disposal an extensive dispositional investigation report containing identifying data, family dynamics, histories of school, employment and outside activities, an account of past associations the youth has had, the results of any special examinations such as psychological reports, and an overally evaluation and recommendation by the probation officer. It is estimated that the probation officer's recommendations are followed 80% of the time. Of particular interest to the court in making these decisions are what types of services have already been used to rehabilitate, and what the youth's response to any previous probation or conditional release has been.

In 1978, of the 2,712 dispositions ordered by the court the following breakdown occurred:[26]

Placed on probation.	1,242	(45.8%)
Continued on probation	369	(13.6%)
Committed to the State Department. . of Corrections	349	(12.9%)
Transferred to Adult Court	65	(2.4%)
Case Dismissed	319	(11.8%)
Case Terminated and Closed	365	(13.4%)
Other.	3	(0.1%)

---

[26] Source: Maricopa County Juvenile Court Center Preliminary End of the Year Report, 1978.

First time offenders generally receive dispositions which are the least restrictive if the offense was non-violent. Repeat offenders receive increasingly more restrictive dispositions. The court imposes any special conditions of probation which it considers appropriate to the rehabilitation of the youth including restitution. The present trend indicates that the number of placements with outside agencies is decreasing and commitments to the State Department of Corrections (DOC) is increasing. These commitments are considered by the court as treatment to be used in particular cases and not as a "dumping ground" for youths. Factors influencing a decision to commit to DOC include the need for full-time residential supervision, estrangement from damaging outside environments or associates, and punishment which is looked upon as an appropriate element of rehabilitation in some cases.

coconino county

Coconino County was chosen to be included within this study to represent the rural counties of Arizona. Several factors were considered in making this selection:

1) Geographically it is the largest county in the state.

2) The Juvenile Court located in Flagstaff, Arizona receives referrals from a number of distant rural communities.

3) The county had an above average juvenile arrest rate in 1978 (50.8 per 1,000 youths).

4) The Juvenile Court receives a substantial number of cases involving out-of-state, out-of-county, and Indian reservation youths.

5) The juvenile court has recently engaged a "status offender coordinator" and is in the process of initiating several community programs to deal with this problem area.

6) Coconino County Juvenile Court procedures may be considered representative of those utilized in other counties in the northern region of the state.[27]

OPERATIONAL SYSTEM

Referrals to Juvenile Court

Juvenile referrals/complaints are made to the Coconino County Juvenile Court Center located in Flagstaff, Arizona.[28] The Center operates under and for the Juvenile Court, Superior Court of Arizona and has original and exclusive jurisdiction over all delinquent, incorrigible and dependent children under eighteen years of age. The Center is staffed and on call 24 hours a day, seven days a week. A referral is made to the juvenile court by the filing of a form which requires basic information about the youth,

---

[27] Statistical data from: Preliminary Draft of the Arizona Juvenile Justice Plan of 1980, Arizona State Justice Planning Agency.

[28] All referrals involving dependent children are forwarded by the Juvenile Court directly to the Arizona Department of Economic Security.

best copy available

particulars of the alleged offense or conduct, and the signature of the individual responsible for the filing. The form is standardized and is used throughout the State of Arizona for all classes of juvenile cases. The complaint alone may be forwarded to the Center or it may accompany the physical referral of a youth.

Youth are referred to the court by a number of sources which include: law enforcement agencies, schools, parents, guardians, social agencies and individual citizens. Law enforcement referrals account for a large percentage of those received. Referrals from parents are uncommon. Schools do make referrals, however, the present trend indicated that schools are handling an increasing number of juvenile problems internally without the aid of the juvenile court. Of those referrals which are made by the schools the most frequent involve theft and intoxication.

The total number of referrals for behavioral reasons in 1978 was 1,230. Of those 429 had been previously referred, and 657 of the total were residents of Coconino County. The average age of those referred was 15. Sixty-three percent of the referrals were Anglo, 24% Indian, and the remainder primarily Mexican-American or black. Of the 1,230 referrals made, approximately 19% were for felonies, 39% were for misdemeanors, and 43% were for status offenses.[29]

Police Practices[30]

Juvenile cases are not assigned to a particular officer or officers. Cases are handled by the official who comes into contact with the situation during the performance of his regular duties.

When confronted with an alleged juvenile offender a police officer has a choice. He may arrest and file a complaint or he may decide not to refer the matter to court. When the latter course is pursued, the youth is taken home[31] and released to the parents. A verbal warning is given to the youth and parents, which normally consists of an explanation of the law and the possible consequences of its infraction. A report is made of warnings issued to youths by way of routine entry in an officer's log; however, no record is sent to the Juvenile Court Center.

There are no written, formal criteria for determining who is to be merely warned and released, however, factors which are considered include: whether the parents can be contacted, the age of the youth and the nature of the offense. The exact frequency of warn and release diversion is uncertain. It is estimated, however, that the percentage is fairly low. The general, informal policy of the police is to refer all cases, where probable cause is present, to the Juvenile Court Center. This may, in part, contribute to Coconino County's above average arrest rate.[32]

---

[29] Source: Coconino County Juvenile Court Annual Report, 1978

[30] This description is based upon procedures utilized by the Flagstaff Police Department, the largest municipal law enforcement agency in Coconino County.

[31] Officers do not divert youth by referral to outside agencies although youth and parents may be advised that counseling, therapy or recreational programs should be voluntarily sought. Child abuse cases, to which a particular officer is assigned, are, however, referred to the Department of Economic Security.

A police officer's decision to arrest is always based upon information from the investigation of an incident which leads them to believe that probable cause exists that a youth has committed an offense. Other factors considered include the youth's attitude and whether any prior offenses are known to the officer. Written procedures exist for arrest and police are required to adhere strictly to them.[33] The mechanics of juvenile arrests are identical to those of adult arrests except that a youth's parents are contacted. A "Miranda warning" which includes notice of the youth's right to remain silent and have legal counsel is given immediately in the field. In many cases the youth is first taken to the police station where the paperwork is done. Normally this takes from 30 to 45 minutes. Interviews with the child are rarely conducted at this time. When interviews are held parental consent must be obtained and either the parents or an official of the juvenile court must be present during the interview.

Most referrals to the juvenile court by the police, including status offenders, are physical and not paper. Generally, either the police divert the youth or he is brought to the detention facility.[34] No written guidelines exist for determining when to physically refer, and the decision has been described as somewhat arbitrary.

In all cases when a decision to physically refer has been made the juvenile is taken to the Juvenile Detention Center. Youths are never taken to the Coconino County jail.

The police make recommendations to the juvenile court that certain youths be detained. Factors which contribute to the decision to make such a recommendation include: the attitude of the youth (violent, assaultive, self-destructive), whether the youth is under the influence of alcohol or drugs, the nature and seriousness of the alleged offense, and whether the offense was alleged to have been committed by two or more individuals making it desirable in the opinion of the police officer to separate the offenders. These recommendations are recorded on the standard referral/complaint form. Parents are always contacted when a youth is arrested. Space is provided on the uniform complaint for the time and method of parental notification and this information must be provided. Notice is made by telephone or in person if necessary.

The police do not make recommendations regarding the filing of petitions in particular cases. They are, however, occasionally asked by the

---

[32] In 1978 Coconino County's arrest rate was 50.8 per 1,000 juveniles, the fourth highest in Arizona. Source: Preliminary Draft of the Arizona Juvenile Justice Plan of 1980, Arizona State Justice Planning Agency.

[33] See A.R.S. 8-223.

[34] Of the 1,230 referrals made to the Juvenile Court Center in 1978, 1,187 youth were detained. Source: Coconino County Juvenile Court Annual Report, 1978

County Attorney's office of the Juvenile Court Intake/Probation Department for additional information or advice regarding an offense.

Juvenile Detention Facility

The Coconino County Juvenile Center Detention Facility receives a variety of different types of cases.[35] It is staffed continuously by a resident couple who work a two-week alternating shift. The facility is adjacent to the probation/court complex with separate wings for females and males. The detention is secure and isolation of all youths admitted is utilized for the first 24 hours. Thereafter an attempt is made to separate the younger children from the older youths though no formal, uniform division exists. The facility has a recreation room which youths are allowed to use periodically if they have not created any disturbances; occasionally, probation officers will supervise the youths in outdoor activities. Behavior is controlled primarily through the use of isolation, however, curtailment of recreation privileges is also used. During the school year, if a youth is being held in the facility and is not considered dangerous to others, he will be taken to and picked up from school each day. Medical services are available 24 hours a day from an outside agency retained for that purpose.

The County does maintain a foster home, however, it is not utilized for pre-adjudication detention. It is the understanding of the juvenile court that under present statute children may only be placed in a foster home by way of a dispositional order after adjudication. No other non-secure detention facilities are available.

Detention

When a youth is brought to the detention facility he is admitted by one of the detention staff, sometimes with the assistance of a probation officer. A detention/intake form is completed and the child's parents are contacted. Normally a child is not allowed to phone his parents. The probation officer makes the contact and if the youth wants to speak with them he is usually given the opportunity. Homes without a telephone are contacted personally.[36] After being admitted, youths are placed in a secure, isolated compartment pending further processing of the case by the probation department.

The standard procedure for those admitted who are under the influence of alcohol is to remove their belt, shoes and pocket contents, and place them in a secure compartment until they are sober. The procedure is essentially the same for drug abuse. In both cases if there is any sign or complaint of immediate health problems the youth is referred to a physician at once.

---

[35] Delinquent, status offense, incorrigible, and alcohol/drug cases are all referred to the facility.

[36] In the case of outlying households which do not have a telephone, agencies in distant parts of the county are contacted and directed to personally deliver a message to the residence.

Intake Processing

Physical and paper referrals are assigned to a particular intake/probation officer who retains that assignment until the youth exits the juvenile system.[37] Intake/probation officers are on call 24 hours a day. The probation officer investigates the matter and meets with the parents and minor to discuss the case with them. The youths are advised of their "Miranda" and "Gault" rights at all interviews.[38] Occasionally, such an interview is not held if the probation officer has had prior dealings with the youth and parents. The probation officer also talks with the person making the complaint. Victims of a crime are interviewed and are periodically informed as to the progress or outcome of a case.

After making this initial investigation the probation officer decides how the case should proceed. First, if the child has been physically referred to the Center, the probation officer determines whether to release the youth or hold him for a detention hearing. It is estimated that of those admitted to temporary detention, 50% are released within a few hours.[39] It is Juvenile Center policy to place youths in the least restrictive setting possible. Local youths are almost always allowed to go home if their parents are willing to accept the responsibility of supervising them. However, youths who have past records of breaking parole or failing to appear at hearings are not released. Out-of-county and out-of-state runaways are held until the parents can be contacted and release to them is arranged. Those under the influence of alcohol or drugs are held until detoxification is complete.

The probation officer also decides whether to recommend the filing of a petition or adjustment of the complaint.[40] In determining whether to adjust, the probation officer looks to the nature of the crime, the attitude of the youth, his past record and whether the parents are concerned and upset about the incident.[41] Few incorrigibility petitions are filed. The status offense coordinator adjusts nearly all such complaints by diverting the youth to outside agencies for various therapeutic programs.[42] Incorrigibility petitions are used only when it is necessary to hold a youth longer than 24 hours, as in the case of out-of-state runaways whose parents cannot be contacted. In cases which involve only the use of alcohol without any additional offenses, the youths are released to parents, and no petition is filed.

---

[37] The probation staff consists of the chief probation officer, three probation officers stationed in Flagstaff, one probation officer in Page, Arizona, and a part time probation officer in Fredonia, Arizona.

[38] The warning includes the right to remain silent, to have counsel appointed and present, to have a contested hearing and call witnesses on his behalf, and that information given by the youth may be used against him.

[39] The average stay in detention in 1978 was 2.9 days. Source: Coconino County Juvenile Court Annual Report, 1978.

[40] Of the 1,230 referrals received by the court in 1978, 804 were adjusted. Source: Coconino County Juvenile Court Annual Report, 1978.

[41] Probation officers are reluctant to subject a youth to "double punishment" where it is apparent that the parents intend to take punitive action in the home.

Should the probation officer decide that adjustment is not warranted, he may recommend that the youth be released, but that the petition be "held" for a length of time. When the youth is released he and his parents must sign a standardized "conditional release" form. In it the child promises to appear for a hearing, not violate any laws, not associate with others who are violating the law, be home by 9:00 P.M., and attend school regularly unless steadily employed. It also states that violation of any of the conditions can result in arrest and incarceration.

If, then, the youth "stays out of trouble" and is not referred back to the court the complaint is adjusted and no petition is filed. The normal holding period in such situations is four months during which time the youth may be required to meet with the probation officer at one or two week intervals. It is estimated that this option is exercised infrequently and that only those youths with a positive attitude who exhibit remorse, thereby making the probation officer reluctant to adjudicate, are subject to such a release. Because no system of bail exists, "conditional release" forms are also used when adjudication is recommended, but the youth is not detained prior to the hearing.

Filing of Petitions[43]

The prosecutor from the Coconino County Attorney's Office makes the final decision in all cases as to whether to file a petition. He visits the juvenile center in the morning of each working day at which time all referrals of the past 24 hours are presented to him.[44] His criterion for filing is the same as for adult criminal cases: the presence of probable cause, though to a somewhat less stringent degree in less serious cases. In addition, he receives recommendations from probation officers. The working relationship between the prosecutor and the probation department is good. Consequently, the latter's recommendations are usually followed, excluding instances where the attorney recognizes legal deficiencies which prohibit the case from going forward.

---

[42] Periodic follow-up investigations and reports are made on all diverted status offenders to determine if they are participating in the outside agency programs assigned by the status offender coordinator.

[43] Of 1,230 referrals, the number of delinquency/incorrigibility petitions filed in 1978 was 417. Source: Coconino County Juvenile Court Annual Report, 1978.

[44] The juvenile prosecutor does not handle only juvenile cases and must divide his time between duties in the Juvenile Court and the Superior Court.

The petition itself consists of a standardized form, used throughout Arizona, which contains an identification of the child, a description of the alleged offense, a verification of the petitioner, notice of the time and place of hearing, and a certificate of service. Petitions are filed within 24 hours from the time the youth is admitted to detention excluding Saturdays, Sundays and holidays. Failure to meet this deadline results in release of the youth in all cases.

In the event that an incorrigibility petition is filed it is usually done by the probation officer under the advisement of the prosecutor. Some confusion exists among court personnel as to who is the proper party to make such a filing; generally, however, it is felt that anyone may institute such a petition.

Occasionally, if a youth is to turn eighteen years of age within a matter of weeks and the offense is serious or violent in nature, the complaint will be held, and an adult, criminal prosecution will be pursued after the youth's birthday.

Detention Hearing[45]

Detention hearings are held within 48 hours after the youth is taken into temporary custody by the juvenile center, excluding weekends and holidays. It also serves as an advisory hearing for detained youth. Prior to the hearing, the probation officer submits to the court a detention petition in which he states that a petition has been filed against the child by the county attorney, and the reasons why the child should be further detained pending adjudication. The hearing is normally conducted by the referee unless a serious offense is involved in which case the judge presides. At the hearing the youth is advised that an adjudication will subsequently be held and that he may have counsel appointed to represent him. The nature of the complaint against him is also explained. The probation officer is sworn in and the validity of his detention recommendation is explored. A determination of probable cause is made based upon the verified petition, the police report and the probation officer's investigation. In addition, before detention is ordered several factors are considered: the youth's record, the nature of the crime (assaultive), whether the youth or his parents are out-of-state, degree of self-destructive behavior, the parents' and the child's attitude. Youths are rarely represented by counsel at these hearings. Few youths retain private counsel and appointment of counsel is made after the detention hearing. Parents infrequently attend detention hearings, however, this absence is considered to have little or no effect on the proceedings. Youths are very rarely released at the detention hearing. The order to detain is made on a standardized form which also authorizes a medical examination of the child.

Prior to Adjudication

Copies of the petition are personally served on the child and his parents. Copies are also provided for the probation officer and the counsel for the child/parents. A citation which gives notice of the referral, the alleged offense, the time and place of the adjudication and the requirement of parental attendance accompanies the petition. Service is completed five to seven days prior to adjudication. In cases where the youth has not been detained no formal advisory hearing is utilized. Instead the probation officer advises the youth and parents when they are interviewed. In addition, an "Advisory Letter" is sent along with the petition and citation which explains that if the parents or child wish an attorney and cannot afford one, they may avail themselves of defense counsel which has been retained by the court. It lists the attorney's name, address and telephone number.

---

[45] The number of detention hearings held in 1978 was 143. Source: Coconino County Juvenile Court Annual Report, 1978.

The juvenile or his parents must make the initial contact with the defense counsel. This is done at some point after a detention hearing and at least three days prior to adjudication. The defense attorney decides indigency and does so on the basis of whether a youth owns his own automobile. If a youth is in detention, the attorney will interview the youth at the facility.

Prior to the adjudication hearing, probation officers compile a complete social background report.[46] The average time spent on each report is estimated to be one day. The report contains all relevant information which the officer can acquire and normally includes identifying data, referral data, family information, school records and employment history. A dispositional recommendation is also prepared prior to adjudication. The referee or judge does not have access to the report until after adjudication if the case is contested.

In advance of the adjudication hearing, the county attorney's office investigates the various elements of proof involved in the case. Occasionally the police are directed to obtain additional information about the offense. If subsequent police investigation uncovers evidence favorable to the youth, the complaint may be adjusted even though a petition has been filed.

Transfer Hearings

The county attorney's office normally files requests for transfer hearings. The juvenile court judge has promulgated written criteria to determine which youth may be the subjects of a transfer hearing. Important factors include age (close to eighteen), nature of the offense, number of contacts by the youth with the court system, and whether the youth is living essentially an adult lifestyle. Probation officers do, upon occasion, also request transfer hearings. Factors in making their request are similar to those considered by the prosecutor. Transfer hearings are not invoked frequently.[47]

---

[46] A complete social history including diversion follow-up reports is prepared and kept on all status offenders whether or not a petition is filed.

[47] Only three youths (male) were remanded to adult court in 1978. Source: Coconino County Juvenile Court Annual Report, 1978.

These hearings are always held before the judge and are formal in nature. The procedure is similar to that of a preliminary hearing in an adult, criminal case. The determination as to whether transfer is warranted is made in strict compliance with court rule.[48] If remand is ordered the youth is transferred to the Coconino County Jail.

Adjudication

Normally, fifteen days or less elapse from the time of arrest until adjudication. If the case is uncontested, the time ranges from seven to ten days as the court calendars are usually not crowded. At the hearing, the youth is represented by counsel and the parents are required to attend. The proceedings are somewhat formal though not as stringent as in criminal trials. It is the philosophy of the court to conduct the hearings in such a way as to make an impression on the youth sufficient to cause a modification in his behavior. Instilling respect for and fear of the court system is a major method used to accomplish this end. Plea bargaining is virtually never used. This may be due in part to the estimate that only 1% to 5% of all cases are contested.

Most adjudications are conducted by the referee, though if the offense involved is serious or contested it will be heard by the judge.[49] Parents and youth are routinely advised of their rights to appeal the findings and recommendations of the referee, however, such appeals are rare. The decision of the judge and referee tend to be consistent in most instances.

Disposition Hearing

Disposition hearings are usually waived by the defense attorney and disposition is ordered at the termination of adjudication. The defense attorney does not normally attend dispositional hearings if they are scheduled by the court. The hearing is brief and is based primarily upon the impressions of the judge or referee and the dispositional report and recommendations of the probation officer. These recommendations are normally followed.

In exercising its discretion when ordering disposition, the court uses all of the alternatives which are available in an attempt to meet the needs of each particular case. Included in these dispositional alternatives is the imposition of restitution through monetary reimbursement and work programs to victims and insurance companies, fines,[50] public service, and mandatory residence in the detention facility for a length of time. The judge conducts all dispositions of commitments to the Arizona Department of Corrections. The dispositional report of the probation officer tends to play a major role in making such commitments. Factors which influence the court's decision include: the type of crime, the youth's record, the ability of the parents to control the child and the need to remove a youth from harmful environmental settings.

---

[48] See 17A A.R.S. Juv. Ct. Rules of Proc., rule 14.

[49] In 1978, 311 cases were heard by the referee and 47 were conducted by the judge. Source: Coconino County Juvenile Court Annual Report, 1978.

[50] Monetary restitution received by minors in 1978 was $4,931.17, restitution ordered by the court to be paid directly to the victim was $708.00. Total non-traffic fines paid in 1978 was $1,469.00. Source: Coconino County Juvenile Court Annual Report, 1978.

The following statistics are available regarding the distribution of various dispositions:[51]

Number placed on probation (male 152) (female 32)	184
Number committed to Department of Corrections (male 16) (female 3)	19
Number awarded to Group Home (male 6) (female 2)	8
Number of petitions dismissed	137
Number remanded to adult court (male 3)	3

---

[51] Source: Coconino County Juvenile Court Annual Report, 1978.

An Analysis Of The Relationship Between Arizona Juvenile Justice As Codified And Its Operational Administration

A. The following difficulties exist with respect to the administration of juvenile justice in Arizona:

1) Some confusion is present within the counties as to the statutory authority to place pre-adjudicatory juveniles in foster homes.

2) It is uncertain who is to file incorrigibility petitions.

3) The question has been raised whether the determination of indigency, for the purpose of appointing counsel, should be based upon the financial status of the juvenile or that of the parents.

4) It is not entirely certain whether the probable cause determination made at a detention hearing may be based upon a verified petition of affidavit which is itself based upon hearsay.

5) There is some uncertainty as to what evidence is required to prove, for purposes of a transfer hearing, that a juvenile is not amenable to treatment or rehabilitation as a delinquent youth through available facilities.

B. Practices based upon interpretations of the codified system include:

1) Petitions are sometimes held pending a period of conditional release which is similar to pre-adjudication probation. Petitions are then filed, in some cases several months later, if a juvenile's subsequent conduct does not fulfill the imposed conditions.

2) Complaints involving offenses alleged to have been committed by seventeen-year-olds are sometimes held pending the youth's eighteenth birthday and then filed as adult criminal charges.

3) Special conditions of probation imposed by the court comprise a wide variety of measures including, in at least one county, mandatory post-adjudication stays in the detention facility.

4) Dispositions are sometimes delayed while adjudicated delinquents or incorrigibles are conditionally released to a program similar to probation. The final dispositional order of the court is then based, in part, upon the juvenile's conduct during that probationary period.

An Analysis Of The Relationship Of The Combined State System To Selected National Standards

The following selected standards approved and adopted either by the American Bar Association (ABA), the National Advisory Committee on Standards for Adjudication (LEAA) or the Juvenile Justice and Delinquency Prevention Act of 1974, do not exist within the Arizona juvenile justice system.

1) Incorrigibility which does not violate criminal law should not be subject to the jurisdiction of the juvenile court.

2) Status offenders should not be classified as "delinquent" within the juvenile court system.

3) The police should release juveniles or deliver them to the juvenile detention facility within two hours of initial contact.

4) Status offenders should be kept separate and apart from detained juveniles alleged or adjudicated to be delinquent.

5) A defense attorney when requested by a juvenile, should be appointed immediately upon admission to detention.

6) Detention hearings should be held within 24 hours after the juvenile has been taken into custody.

7) In the case of non-detained juveniles, petitions should be filed within five judicial days after the complaint is made.

8) Consent decrees (a procedure similar to a conditional release pending the filing of a petition) should be limited to a three month period after which no petition on the original complaint may be filed.

9) A "preliminary hearing" to formally determine the existence of probable cause prior to adjudication should be utilized.

10) Adjudication hearings should be held within 15 calendar days after the filing of the petition for juveniles detained and within 30 calendar days for non-detained youth.

11) Dispositional hearings should be held with 15 days after adjudication.

Conclusions and Recommendations

In the interest of refining and improving the quality of Arizona's juvenile justice system, suggestions prompted by this study of the doctrinal and functional systems have been compiled. It should be noted, that many positive practices were found. These areas, however, which have proven to be weak include:

1) Appointment of defense counsel should occur prior to the detention hearing. Under the present system appointment is made 48 hours after the youth has been admitted to the detention facility and initial contact with counsel may not be made for an additional 48 hours. The interest in protecting the important right of the juvenile to remain free pending adjudication, and the potentially damaging effect of interviews with police investigators and probation officers by juveniles without the aid of legal advice, suggest that defense counsel be appointed as soon after admission to detention as is practically possible. Frequently, youth admit the allegations of the petition at the advisory/detention hearing, without having had an opportunity to discuss his decision with a defense attorney. In addition, a youth may be detained up to eight days before an appeal of the detention decision is made by his attorney. In light of the special need of juveniles to be aided in understanding their rights and the possible consequences of admissions, it is submitted that an earlier advisory proceeding be initiated, at which time court is prepared to appoint an attorney.[52]

2) If detained, incorrigibles should be held completely separate and apart from delinquents in detention.

3) A review of detention decisions to consider their continuing propriety at regular intervals should be codified in order that the changing needs and conditions of each case can be promptly addressed.[53]

---

[52] It has been suggested that a standard video tape be prepared and approved and be shown to a youth immediately upon being admitted to detention which explains the child's rights and the court process. Any questions resulting from that tape would then be referred to a public defender at the earliest possible time.

[53] In Maricopa County detention decisions are reviewed on a weekly basis.

4) Alternatives to the secure detention of pre-adjudicatory youths need to be further developed for alleged status offenders and delinquents. Serious consideration should be given to taking alcohol/drug cases out of the regular juvenile court detention process with physical referrals being made to an outside agency. Additionally, statutes need to be clarified so as to provide express authority to place pre-adjudicatory youths in foster homes and shelter care centers.

5) Limits should be set as to the length of time a petition may be "held" before filing in non-detention cases. The filing of a petition should be prohibited after a reasonable length of time has elapsed.

6) The adjudication hearing for detained and non-detained youths should be assigned a restrictive time frame which is long enough to prepare an adequate defense yet short enough to ensure a speedy handling of the case.[54]

7) The disposition hearing should be assigned a time frame which limits the adjudication - disposition period to a reasonable length.[55]

---

[54] The Pima County Local Rule of Procedure for Juvenile Court, Rule V may be considered. In Pima County, the date set for an adjudication hearing shall be no later than 15 days from the filing of the petition if the child is detained. If he is not detained, the date set for hearing must be no later than 30 days from the filing of the petition.

[55] The Pima County Local Rules of Procedure for Juvenile Court, Rule VI may be considered. In Pima County, the date of the disposition hearing is set within 15 days from adjudication if the child is detained and within 30 days if he is not.

The Juvenile Justice System Of The District Of Columbia

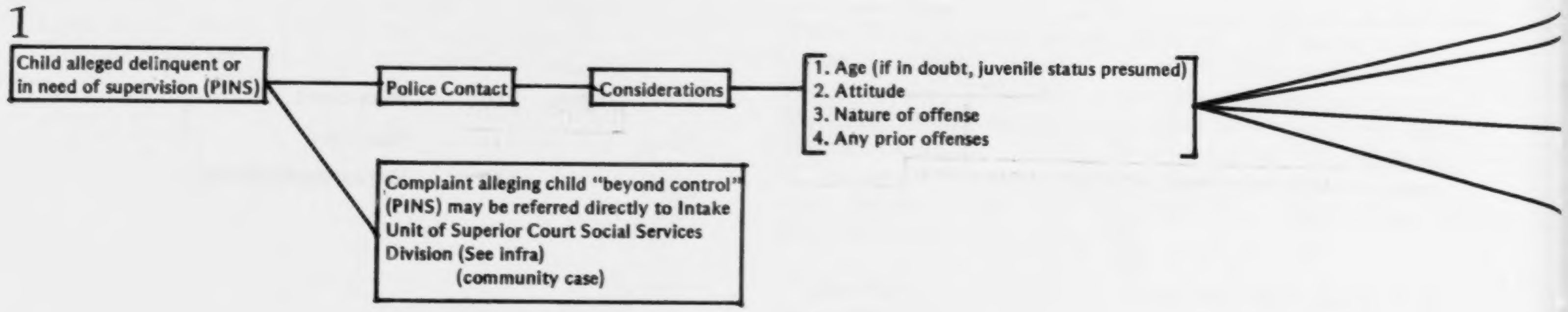
Flow Chart And Analysis

–Jonathan Fenton

page 110 **Flowchart**
111 **Narrative**
157 **Recommendations**

Flow Chart And Analysis

[M.P.D.C. General Order, Series 305, No. 1 (March 4, 1973)]


1
Child alleged delinquent or in need of supervision (PINS)
Police Contact
Considerations
1. Age (if in doubt, juvenile status presumed)
2. Attitude
3. Nature of offense
4. Any prior offenses
Complaint alleging child "beyond control" (PINS) may be referred directly to Intake Unit of Superior Court Social Services Division (See infra)
(community case)

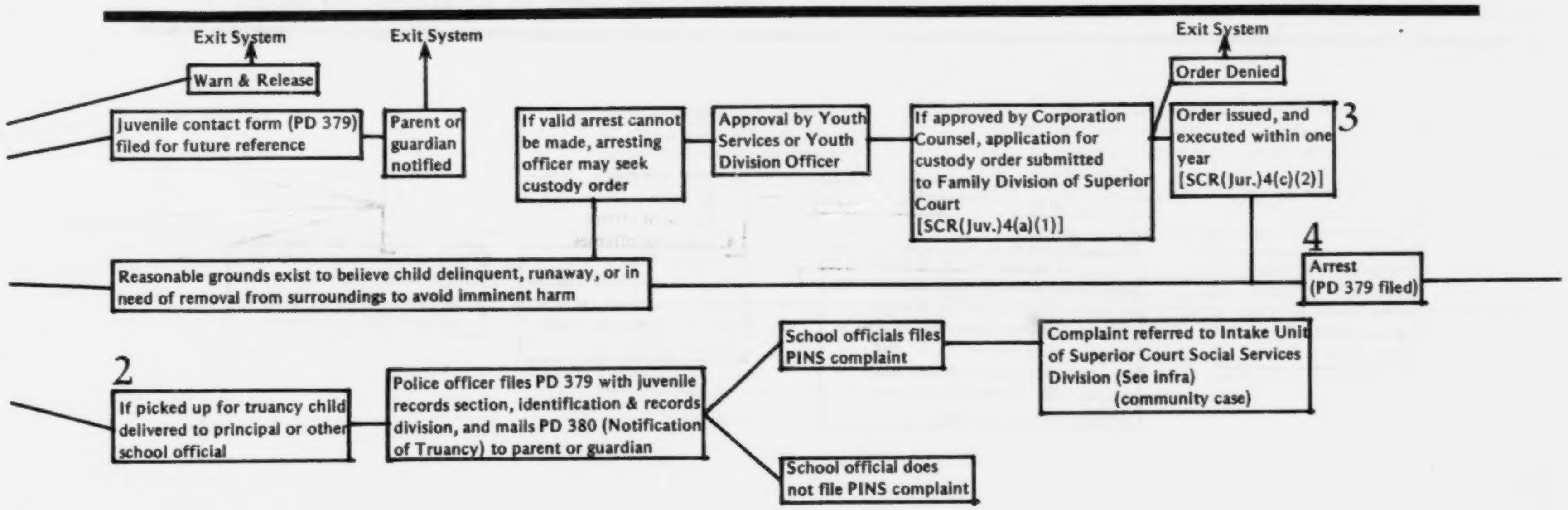
1. D.C. Code sec. 16-2301(3) (1973) defines "child" as any person under the age of 18 or any person under the age of 21 who is being charged for a delinquent act alleged to have been committed when he or she was under the age of 18, subject to the following exceptions:

    1) *a person charged by the U.S. Attorney with an offense allegedly committed when he or she was 16 or older, and the offense is a) murder, forcible rape, armed robbery, assault with intent to commit any of the above, or burglary 1, or b) any of the foregoing offenses plus any other offense properly joinable with such offense, or c) any of the foregoing offenses where the person is convicted by pleas or verdict of a lesser included offense;*
    2) *a person 16 or older charged with a traffic offense.*

    Pursuant to Superior Court Juvenile Rule (SCR (Juv.)) 101 (e), the term "traffic offense" does not include negligent homicide.

2. If the child refuses to identify his or her school, he or she is transported to a Youth Services (YS) or Youth Division (YD) officer who makes further attempts to discover which school the child attends, either through interviewing the child or contacting his or her parents. If these attempts prove unsuccessful (which they rarely do) the child is transported to the Receiving Home for Children (RHC) where he or she is detained until the child's school is identified.

3. According to a YS officer, a custody order must be executed within 30 days of issuance.


Exit System
Exit System
Exit System
Warn & Release
Juvenile contact form (PD 379) filed for future reference
Parent or guardian notified
If valid arrest cannot be made, arresting officer may seek custody order
Approval by Youth Services or Youth Division Officer
If approved by Corporation Counsel, application for custody order submitted to Family Division of Superior Court [SCR(Juv.)4(a)(1)]
Order Denied
Order issued, and executed within one year [SCR(Jur.)4(c)(2)]
3
4
Arrest (PD 379 filed)
Reasonable grounds exist to believe child delinquent, runaway, or in need of removal from surroundings to avoid imminent harm
2
If picked up for truancy child delivered to principal or other school official
Police officer files PD 379 with juvenile records section, identification & records division, and mails PD 380 (Notification of Truancy) to parent or guardian
School officials files PINS complaint
Complaint referred to Intake Unit of Superior Court Social Services Division (See infra) (community case)
School official does not file PINS complaint

4. Upon arrest, the child is read his or her rights and usually handcuffed. Sometimes a patrol officer will call a YS or YD officer before making an arrest, relate the circumstances of the contact, and ask for advice.

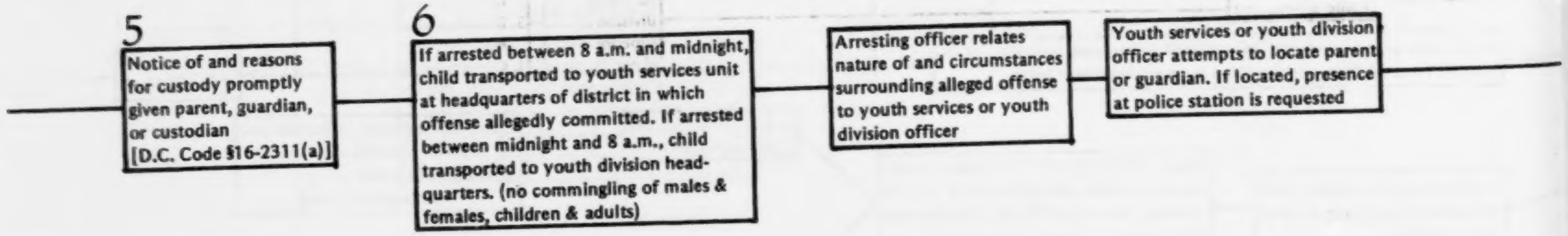
5. If the child refuses to state his or her home phone number, or if the arrest is not executed within the vicinity of the child's home, the arresting officer will leave notification of the parents to the YS or YD officer.

6. Children may be unknowingly commingled with adults, if the child or adult lies about, or if the police make an incorrect estimation of his or her age.

7. According to a YS officer, the decision to refer a case to Family Division is based primarily upon two criteria: 1) nature of the charge, and 2) whether the facts appear promising for a successful prosecution.

8. If a child is unruly or if the police station is overly crowded, the child may be temporarily placed in a locked, windowless room to await further action. Although the police do not place children in a cellblock, when a child is brought to court he or she is placed in a cellblock.

Children brought to court after an overnight stay at the RHC (see chart accompanying note 12 *infra*) are immediately placed in the main cellblock. Children brought directly to court after arrest (see chart accompanying note 12 *infra*) as well as all other children whose detention hearing is about to be held, are placed in cells located behind the courtroom. Although commingling with adults is avoided, often these cells become quite crowded, and there is no attempt to separate

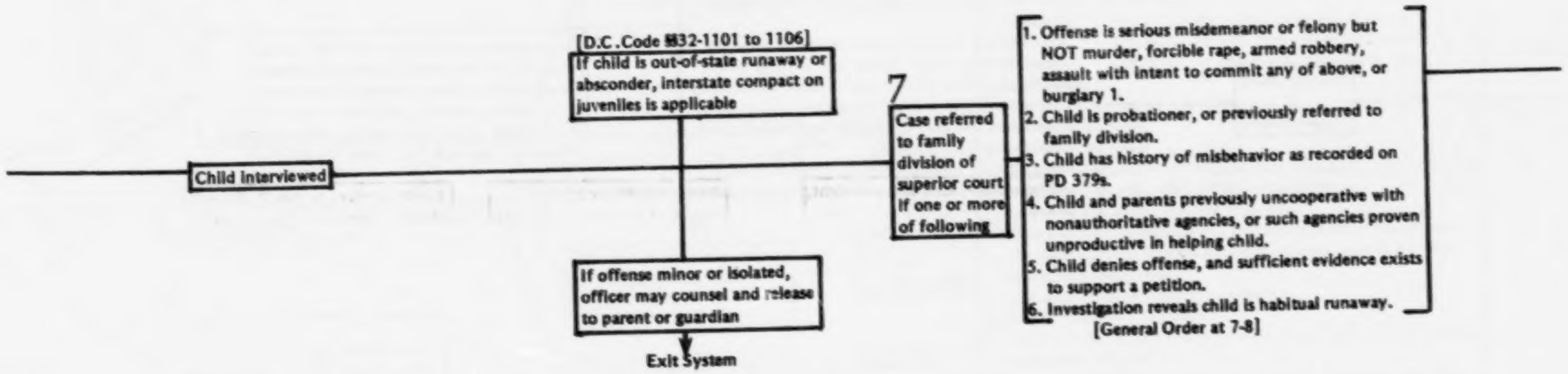

5
Notice of and reasons for custody promptly given parent, guardian, or custodian [D.C. Code §16-2311(a)]
6
If arrested between 8 a.m. and midnight, child transported to youth services unit at headquarters of district in which offense allegedly committed. If arrested between midnight and 8 a.m., child transported to youth division headquarters. (no commingling of males & females, children & adults)
Arresting officer relates nature of and circumstances surrounding alleged offense to youth services or youth division officer
Youth services or youth division officer attempts to locate parent or guardian. If located, presence at police station is requested

alleged PINS from alleged delinquents, or children charged with violent crimes from those charged with non-violent crimes.

D.C. Code sec. 16-2313(d) states that subject to two exceptions (which are inapplicable here), "no child...may be detained in a jail or other facility for the detention of adults...." The Superior Court's main cellblock is a jail for the detention of adults as well as children (though commingling is avoided). One might argue that Congress was merely interested in avoiding commingling; however, this argument appears tenuous because one of the two exceptions to the above proscription allows for transfer of an uncontrollable child to an adult jail, D.C. Code sec. 16-2313(e). Because this provision still prohibits commingling, it logically follows that Congress in section 16-2313(d) intended to keep children out of adult lockups as well as prevent commingling. If this were otherwise, the exception (section 16-2313(e)) would be no different from the rule (section 16-2313(d)).

One might additionally argue that the Superior Court cellblock is really not an "adult detention facility" or is more than one cellblock, but such arguments would be obvious attempts to circumvent the legislative policy underlying section 16-2313(d). It is axiomatic that courts may not usurp the legislative function or disregard a Congressional directive.

In addition to contravening the policy underlying if not the specific language of D.C. Code sec. 16-2313(d), detaining children in the Superior Court's cellblock conflicts with a principle which the Court states underlies all its Juvenile Rules. SCR(Juv.) 2 states that "when a child is removed from his own home, the Division will


Child interviewed
[D.C. Code §§32-1101 to 1106]
If child is out-of-state runaway or absconder, interstate compact on juveniles is applicable
If offense minor or isolated, officer may counsel and release to parent or guardian
Exit System
7
Case referred to family division of superior court if one or more of following
1. Offense is serious misdemeanor or felony but NOT murder, forcible rape, armed robbery, assault with intent to commit any of above, or burglary 1.
2. Child is probationer, or previously referred to family division.
3. Child has history of misbehavior as recorded on PD 379s.
4. Child and parents previously uncooperative with nonauthoritative agencies, or such agencies proven unproductive in helping child.
5. Child denies offense, and sufficient evidence exists to support a petition.
6. Investigation reveals child is habitual runaway.
[General Order at 7-8]

secure for him custody, care and discipline as nearly as possible equivalent to that which should have been provided for him by his parents." Unless parents should cage their children, the Court is egregiously ignoring one of its own primary principles.

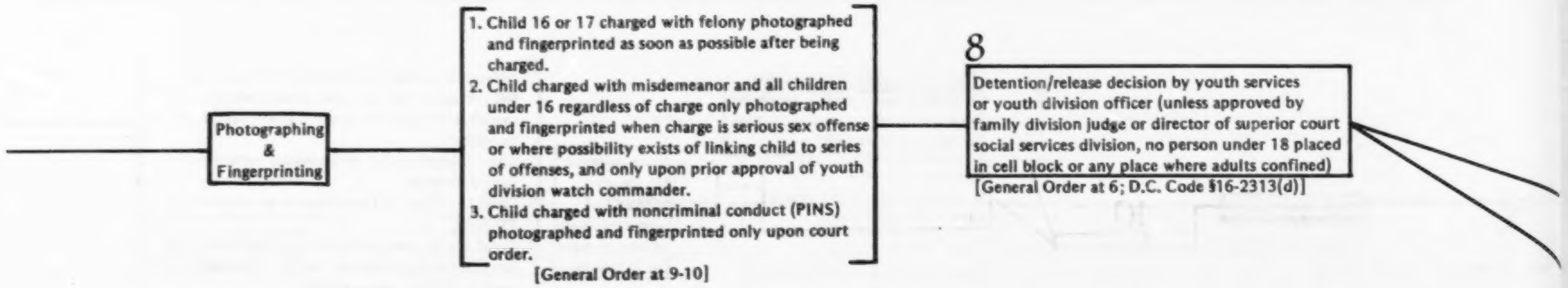
IJA-ABA Juvenile Standards

Standard 5.4 (Interim Status) states that a juvenile should not be held in a "police detention facility" prior to release or transportation to a juvenile facility (i.e., RHC).

9. As a matter of practice, no child (regardless of age) is released by the police if he or she is charged with homicide, rape (statutory or forcible), armed robbery, assault with intent to commit any of the above, burglary 1, abscondence, or any drug offense.

10. According to D.C. Code sec. 16-2310(c), these detention criteria as well as the relevant considerations laid out in SCR(Juv.) 106(a)(1)-(4) "shall govern the decisions of all persons responsible for determining whether detention or shelter care is warranted prior to the factfinding hearing." Presumably this includes the police after arrest, Superior Court Social Services during court intake, and the judge at a detention hearing. MPDC General Order Series 305, No. 1 (March 4, 1973) at 6, however, lists detention criteria which are more general and much less extensive than those listed in the Code and Superior Court Juvenile Rules. The General Order states that detention shall be considered only when one or more of the following exist:

> a. *The parents, guardians, or custodians cannot be located after a diligent effort to do so.*



1. Child 16 or 17 charged with felony photographed and fingerprinted as soon as possible after being charged.
2. Child charged with misdemeanor and all children under 16 regardless of charge only photographed and fingerprinted when charge is serious sex offense or where possibility exists of linking child to series of offenses, and only upon prior approval of youth division watch commander.
3. Child charged with noncriminal conduct (PINS) photographed and fingerprinted only upon court order.

[General Order at 9-10]

Detention/release decision by youth services or youth division officer (unless approved by family division judge or director of superior court social services division, no person under 18 placed in cell block or any place where adults confined)

[General Order at 6; D.C. Code §16-2313(d)]

b. *It is reasonably assumed that parents, guardians, or custodians will not or cannot produce the juvenile before the Family Division, Superior Court, when required.*

c. *The juvenile constitutes a serious threat either to his own welfare or the public safety, based on both present and past offenses.*

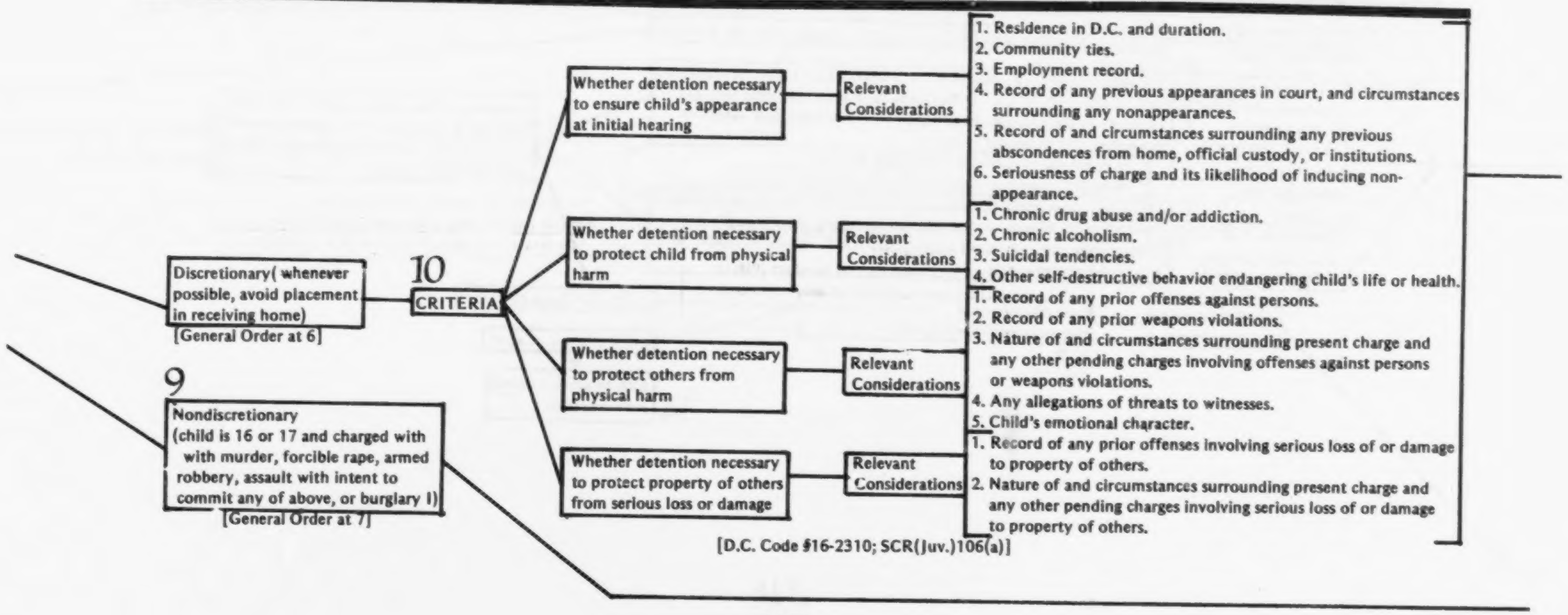
d. *There is strong reason to believe the juvenile may be harmed by others if released.*

Id. at 6-7.

According to a YS officer, in practice the decision whether to detain or release a child pending his or her initial court hearing is based upon three factors: nature of offense, prior record (if any), and whether a parent or relative may be located. This officer also stated that they will only release a child to a parent, guardian, or close relative. Thus, if one cannot be located the child is sent to the RHC regardless of the charge. (This criterion for detention is not present in the Code or Superior Court Juvenile Rules).

IJA-ABA Juvenile Standards

Standard 5.6A (Interim Status) states that an officer must release a child charged with an offense which if committed by an adult would be punishable by a sentence of less than one year (misdemeanor). The standard lists three exceptions: 1) the child is in need of emergency medical treatment; 2) the child requests protective custody, and he or she would be in imminent danger of serious bodily harm if released (Standard 5.7A); or 3) the child is a fugitive. It

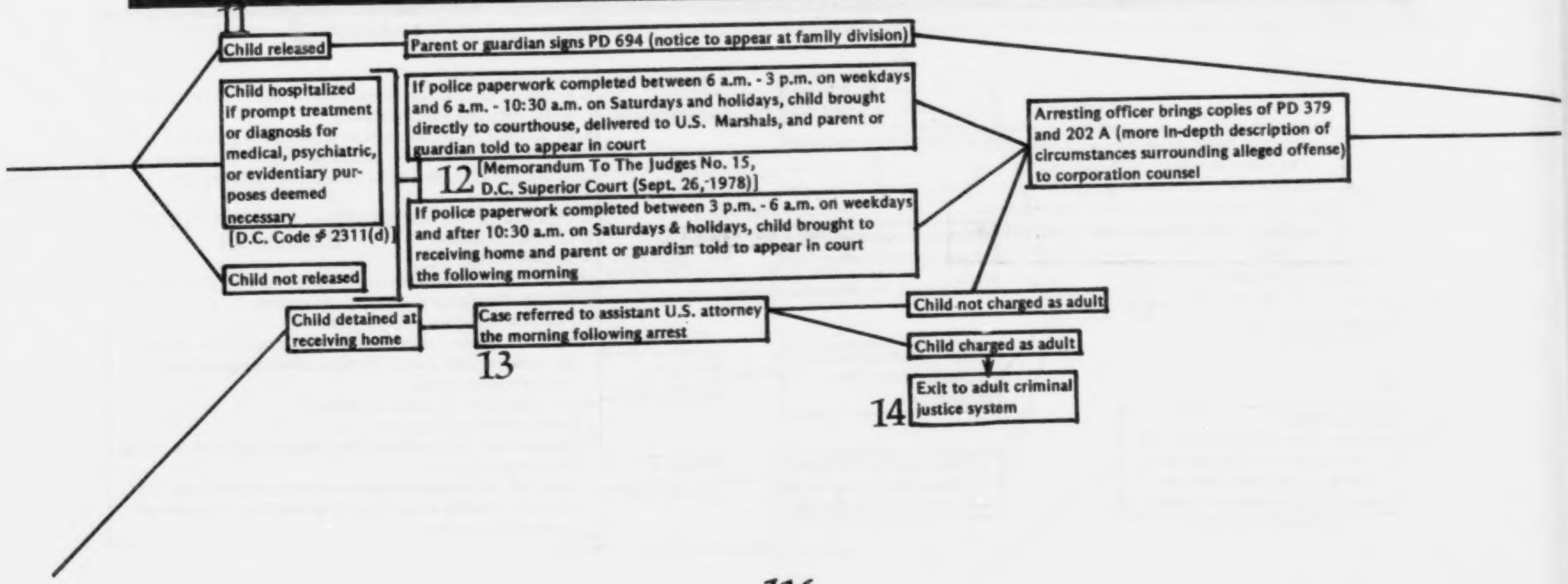

Discretionary(whenever possible, avoid placement in receiving home)
[General Order at 6]
10
CRITERIA
9
Nondiscretionary (child is 16 or 17 and charged with with murder, forcible rape, armed robbery, assault with intent to commit any of above, or burglary I)
[General Order at 7]
Whether detention necessary to ensure child's appearance at initial hearing
Relevant Considerations
1. Residence in D.C. and duration.
2. Community ties.
3. Employment record.
4. Record of any previous appearances in court, and circumstances surrounding any nonappearances.
5. Record of and circumstances surrounding any previous abscondences from home, official custody, or institutions.
6. Seriousness of charge and its likelihood of inducing non-appearance.
Whether detention necessary to protect child from physical harm
Relevant Considerations
1. Chronic drug abuse and/or addiction.
2. Chronic alcoholism.
3. Suicidal tendencies.
4. Other self-destructive behavior endangering child's life or health.
Whether detention necessary to protect others from physical harm
Relevant Considerations
1. Record of any prior offenses against persons.
2. Record of any prior weapons violations.
3. Nature of and circumstances surrounding present charge and any other pending charges involving offenses against persons or weapons violations.
4. Any allegations of threats to witnesses.
5. Child's emotional character.
Whether detention necessary to protect property of others from serious loss or damage
Relevant Considerations
1. Record of any prior offenses involving serious loss of or damage to property of others.
2. Nature of and circumstances surrounding present charge and any other pending charges involving serious loss of or damage to property of others.
[D.C. Code §16-2310; SCR(Juv.)106(a)]

should also be noted that according to Standard 5.6A, the officer may "release the juvenile with a citation or to a parent" (emphasis added), thus eliminating the requirement that a juvenile may only be released if a parent, guardian, or custodian is available to come down to the police station and pick him or her up.

Standard 5.6B (Interim Status) covers all other situations, and although it gives the officer discretion to release or detain the child, it establishes a strong presumption in favor of release--rebuttable only by "clear and convincing evidence...that continued custody is necessary." The standard states that unless the offense is first or second degree murder, the seriousness of the alleged offense should not be used to rebut the presumption in favor of release. It lists three factors, one or more of which may constitute sufficient evidence to rebut the presumption, but only if the arresting officer has reliable information in support of the particular factor relied upon. These factors are:

1) *the child was a fugitive at the time of arrest;*
2) *the child has a "recent record of willful failure to appear at juvenile proceedings"; and*
3) *the child is charged with a violent crime which if committed by an adult would be punishable by a sentence of one year or more (felony), and he or she is already under the jurisdiction of a juvenile court by reason of predispositional release, probation or parole.*

11. If the YS or YD Officer completes the paperwork between 6 a.m. and 3 p.m. on weekdays, and before 10:30 a.m. on Saturdays and holidays, the


11
Child released
Parent or guardian signs PD 694 (notice to appear at family division)
Child hospitalized if prompt treatment or diagnosis for medical, psychiatric, or evidentiary purposes deemed necessary
[D.C. Code § 2311(d)]
Child not released
If police paperwork completed between 6 a.m. - 3 p.m. on weekdays and 6 a.m. - 10:30 a.m. on Saturdays and holidays, child brought directly to courthouse, delivered to U.S. Marshals, and parent or guardian told to appear in court
12
[Memorandum To The Judges No. 15, D.C. Superior Court (Sept. 26, 1978)]
If police paperwork completed between 3 p.m. - 6 a.m. on weekdays and after 10:30 a.m. on Saturdays & holidays, child brought to receiving home and parent or guardian told to appear in court the following morning
Arresting officer brings copies of PD 379 and 202 A (more in-depth description of circumstances surrounding alleged offense) to corporation counsel
Child detained at receiving home
Case referred to assistant U.S. attorney the morning following arrest
13
Child not charged as adult
Child charged as adult
Exit to adult criminal justice system
14

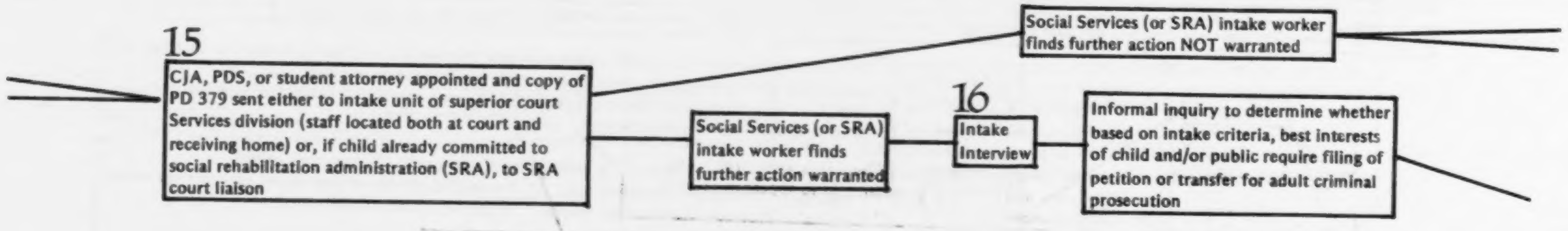
child is always brought to court for a detention hearing, even if the charge is one of which release would be appropriate if court were not in session, and the decision was between release or detention at the RHC. This procedure eliminates the initial detention/release decision (by police), in a system designed to include three points at which a child is subject to release pending the factfinding hearing, (court intake and the detention hearing are the other points at which a Social Services worker or judge, respectively, may remove a child from detained to community status). It appears the reasons for this procedure are threefold: 1) the child's presence in court is assured (because he or she is in custody); 2) the court is in session; and 3) since a detention hearing (detained children) and initial appearance (released children) both include arraignment, the child can be brought directly to court and given an immediate arraignment. It must be pointed out, however, that although children who might have been released benefit from an expedited initial hearing, they lose the benefit of having their detained status screened by the first of three independent persons prior to the factfinding hearing.

12. The weekend and holiday hours which determine when a child is brought to the court or RHC vary, and usually if a child is brought to the RHC in the morning, and RHC will contact the court to find out if it is in session. If the court is in session, the RHC will not accept the child and the delivering officer must take the child directly to court.

IJA-ABA Juvenile Standards

Standard 5.3F (Interim Status) states that all police paperwork should be completed within two hours after the arrest, and the child should be either released or taken to a juvenile facility

[D.C. Code §16-2305; SCR(Juv.) 102]

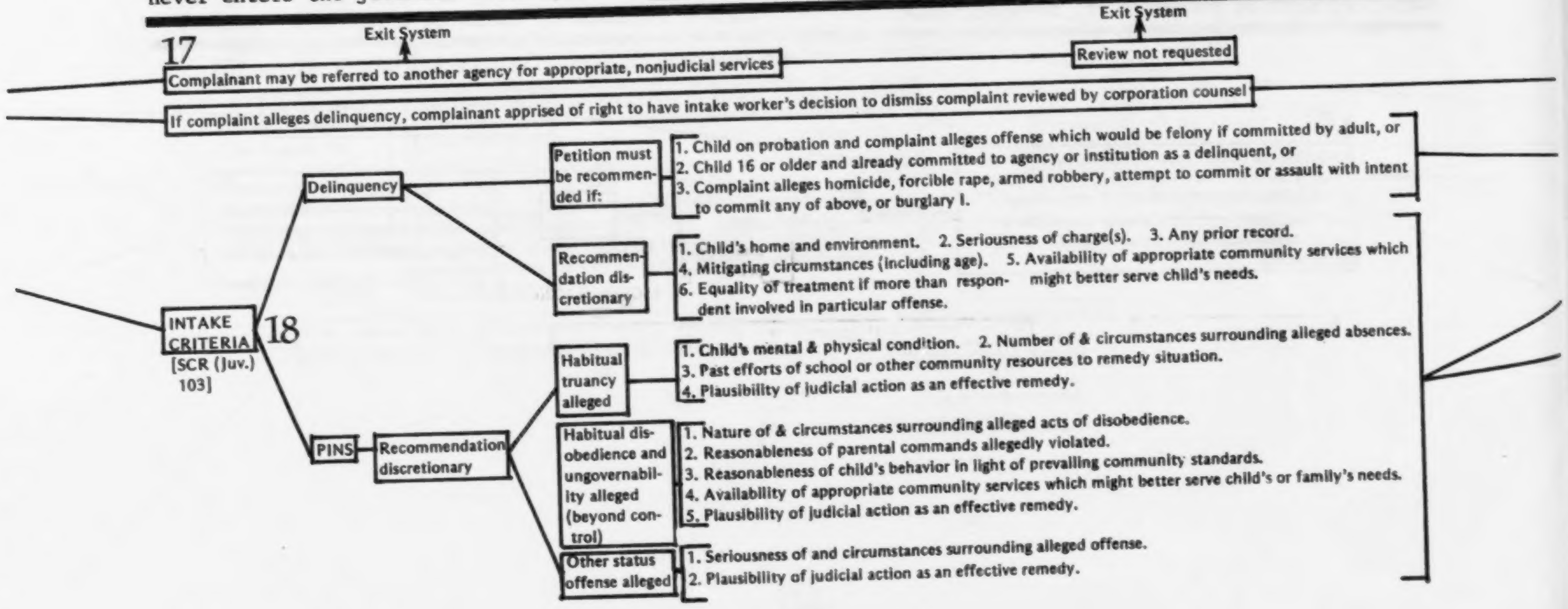

15
CJA, PDS, or student attorney appointed and copy of PD 379 sent either to intake unit of superior court Services division (staff located both at court and receiving home) or, if child already committed to social rehabilitation administration (SRA), to SRA court liaison
Social Services (or SRA) intake worker finds further action NOT warranted
Social Services (or SRA) intake worker finds further action warranted
16
Intake Interview
Informal inquiry to determine whether based on intake criteria, best interests of child and/or public require filing of petition or transfer for adult criminal prosecution

(i.e., RHC) within this time period.

13. Although MPDC General Order Series 305, No. 1 (March 4, 1973) at 8 states that if a child 16 or 17 is charged with these enumerated offenses (see D.C. Code sec. 16-2301(3)(A)) "the arresting officer *will report* the next morning with all essential witnesses to the Office of the United States Attorney..." (emphasis added), the YS or YD Officer has the discretion not to refer such a case to the U.S. Attorney's Office. If the YS or YD Office decides to refer the case, he or she may do so on the day of arrest or the following morning.

14. According to D.C. Code sec. 16-2301(3) (A), a child charged as an adult by the U.S. Attorney for one of the offenses enumerated in this Code section is definitionally not a "child," and thus never enters the juvenile court system. *See* note 1 *supra*. This procedure is informally known as "Title 16 Waiver."

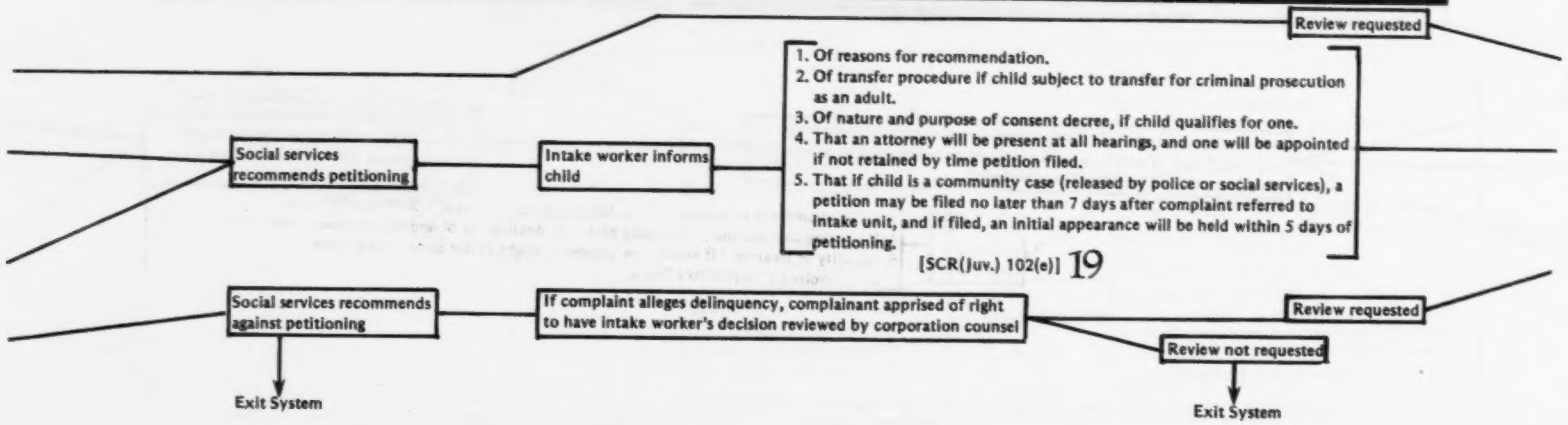
In *In re C.S.*, 384 A2d 407, 411 (D.C. App. 1977), the D.C. Court of Appeals construed D.C. Code sec. 16-2307(h)--which enumerates certain permanent ramifications of a procedure in which a child is transferred to the adult court system *subsequent to entering* the juvenile system--to apply to the "Title 16 Waiver" procedure as well. Both procedures involve charging the child as an adult, but the criteria prerequisite to their implementation are different. *Compare* D.C. Code sec. 16-2301(3) *with* sec. 16-2307(a)). D.C. Code sec. 16-2307(h) states that transfer of a child to the adult court system terminates the jurisdiction of Family Division over any subsequent delinquent act which the child might commit; however, this jurisdiction may be restored if the adult criminal prosecution "is terminated


Exit System
17
Complainant may be referred to another agency for appropriate, nonjudicial services
Exit System
Review not requested
If complaint alleges delinquency, complainant apprised of right to have intake worker's decision to dismiss complaint reviewed by corporation counsel
INTAKE CRITERIA
[SCR (Juv.) 103]
18
Delinquency
Petition must be recommended if:
1. Child on probation and complaint alleges offense which would be felony if committed by adult, or
2. Child 16 or older and already committed to agency or institution as a delinquent, or
3. Complaint alleges homicide, forcible rape, armed robbery, attempt to commit or assault with intent to commit any of above, or burglary I.
Recommendation discretionary
1. Child's home and environment.
2. Seriousness of charge(s).
3. Any prior record.
4. Mitigating circumstances (including age).
5. Availability of appropriate community services which might better serve child's needs.
6. Equality of treatment if more than respondent involved in particular offense.
PINS
Recommendation discretionary
Habitual truancy alleged
1. Child's mental & physical condition.
2. Number of & circumstances surrounding alleged absences.
3. Past efforts of school or other community resources to remedy situation.
4. Plausibility of judicial action as an effective remedy.
Habitual disobedience and ungovernability alleged (beyond control)
1. Nature of & circumstances surrounding alleged acts of disobedience.
2. Reasonableness of parental commands allegedly violated.
3. Reasonableness of child's behavior in light of prevailing community standards.
4. Availability of appropriate community services which might better serve child's or family's needs.
5. Plausibility of judicial action as an effective remedy.
Other status offense alleged
1. Seriousness of and circumstances surrounding alleged offense.
2. Plausibility of judicial action as an effective remedy.

other than by a plea of guilty, a verdict of guilty, or a verdict of not guilty by reason of insanity," and "at the time of the termination of the criminal prosecution no indictment or information has been filed for criminal prosecution for an offense alleged to have been committed by the child subsequent to transfer."

15. The Court Social Services staff located at the courthouse are probation officers who perform three separate functions: intake, diagnostic (preparation of the predisposition report or "social study"), and supervision (for children released pending their factfinding hearing or who are on probation). Previously, all probation officers performed all three functions so that a child would be handled by the same probation officer as he or she moved through the system. Under the present procedure, probation officers are assigned to a particular function, so that one probation officer interviews the child during the intake and is present at the initial hearing; another prepares the predisposition social study; and a third supervises the child if released under specified conditions, pending his or her factfinding hearing, or placed on probation. All probation officers interviewed stated their preference for the previous procedure because it gave them a better understanding of and rapport with a child. According to them, however, administrators at the Social Services Division deem the present system more efficient.

The Court Social Services staff located at the RHC are para-professionals whose sole function is to decide whether to release or detain the child overnight at the RHC pending an initial hearing. Upon arrival at the RHC, a child is signed in, a urine sample is taken, and he or she is brought before the Social Services intake worker. If the

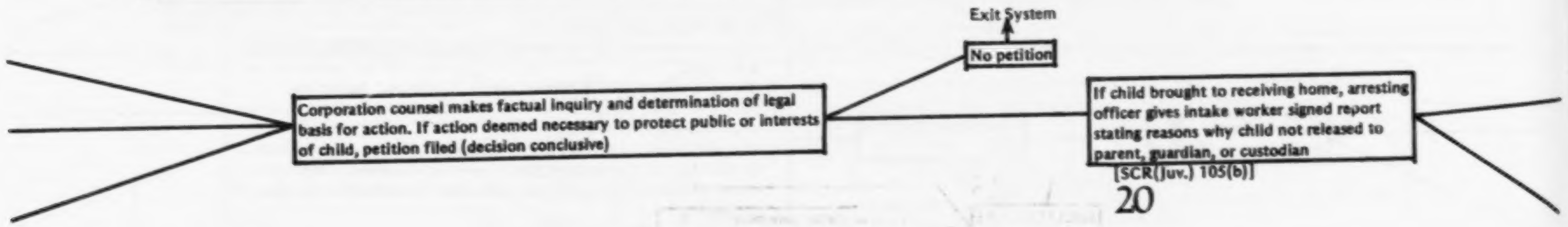

Review requested
1. Of reasons for recommendation.
2. Of transfer procedure if child subject to transfer for criminal prosecution as an adult.
3. Of nature and purpose of consent decree, if child qualifies for one.
4. That an attorney will be present at all hearings, and one will be appointed if not retained by time petition filed.
5. That if child is a community case (released by police or social services), a petition may be filed no later than 7 days after complaint referred to intake unit, and if filed, an initial appearance will be held within 5 days of petitioning.
Social services recommends petitioning
Intake worker informs child
[SCR(Juv.) 102(e)]
19
Social services recommends against petitioning
If complaint alleges delinquency, complainant apprised of right to have intake worker's decision reviewed by corporation counsel
Review requested
Review not requested
Exit System
Exit System

child is already subject to a dispositional order committing him or her to the Social Rehabilitation Administration (SRA) of the Department of Human Resources (DHR), and he or she has either absconded, committed a new offense at an SRA facility, or committed a new offense after being released by the facility, but retained under the supervision of the SRA Aftercare Services Division, then the following morning a four-page "Social Summary" completed by the intake worker is sent to an SRA court liaison worker located at the court. If the child is not already an SRA ward, the following morning the Social Summary is sent to a Social Services probation officer located at the court.

16. If a child is released by the police or brought to the RHC and released by the Court Social Services intake worker, he or she becomes a "community case," and two days later (three days later if arrested on Saturday and four days later if arrested on Thursday or Friday), he or she is interviewed by a Court Social Services probation officer at the courthouse, usually with a parent present.

If the police take the child to the RHC and the child is not released by the intake worker, he or she spends the night at the RHC; the following morning at approximately 6:10 a.m., the child is transported to the courthouse where he or she is delivered to a U.S. Marshal, and placed in a cellblock to await a detention hearing. See note 8 supra. While in the cellblock, the child is interviewed by a probation officer. If the police take the child directly to court, he or she is placed in a cell behind the courtroom (see note 8 supra), and is interviewed there by a probation officer.

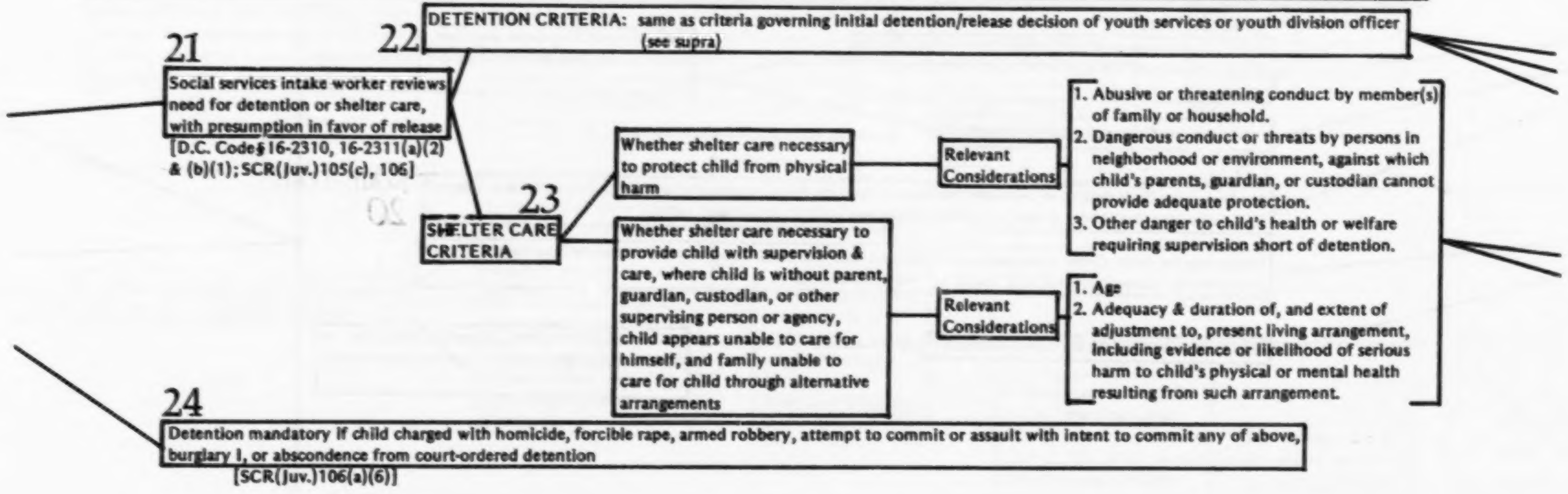
17. Although D.C. Code sec. 16-2305 and SCR(Juv.) 102 indicate that Social Services has the authority to dismiss all PINS complaints (only in delin-


Exit System
No petition
Corporation counsel makes factual inquiry and determination of legal basis for action. If action deemed necessary to protect public or interests of child, petition filed (decision conclusive)
If child brought to receiving home, arresting officer gives intake worker signed report stating reasons why child not released to parent, guardian, or custodian
[SCR(Juv.) 105(b)]
20

quency cases does the complainant have a right to have the intake worker's decision reviewed by Corporation Counsel), if the police have filed a PD 379 in a PINS case, it is the understanding of both Social Services and Corporation Counsel that the latter can petition a case even if the intake worker recommends against it. More frequently, however, Social Services wants a PINS petition filed and Corporation Counsel decides not to petition.

18. Intake workers at the RHC do not have authority to make recommendations concerning petitioning. For children detained overnight at the RHC, such recommendations are made the following day at the courthouse by a Social Services probation officer or SRA court liaison worker (if the child is an SRA ward). These intake workers located at the court also make petitioning recommendations for children brought directly to court by the police, and children released by the police or RHC intake worker, pending their initial appearance (community cases).

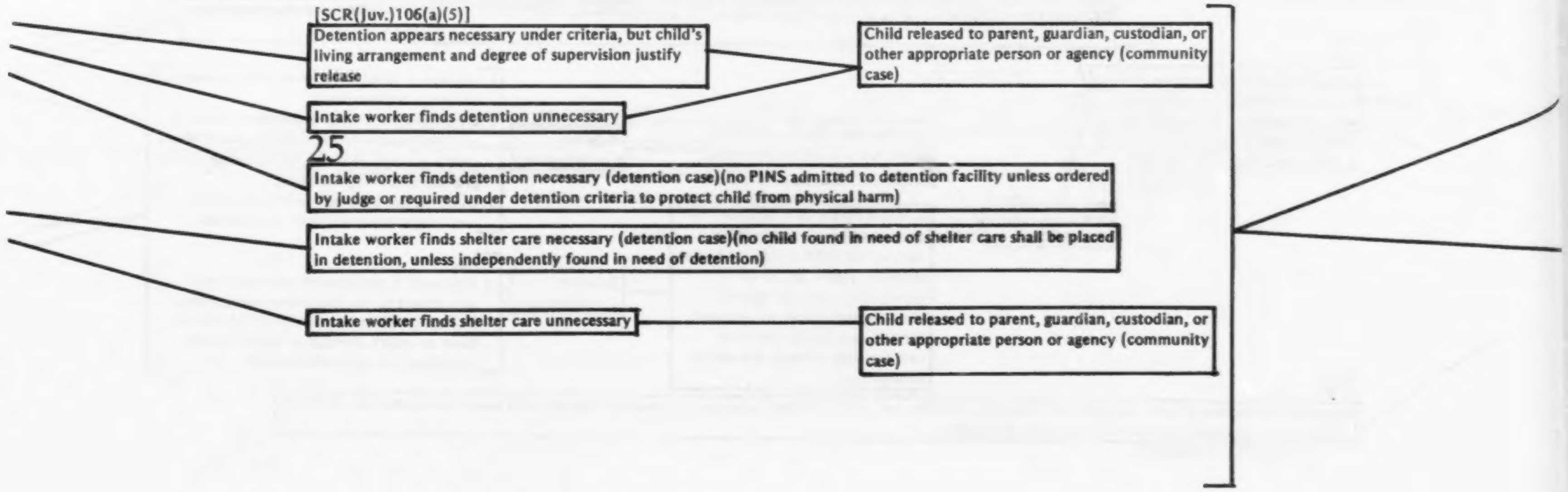
The petitioning decision was designed to include a quasi-appeal procedure whereby intake workers, utilizing specific criteria enumerated in SCR (Juv.) 103 pursuant to D.C. Code sec. 16-2305(a), recommend for or against petitioning, and if petitioning is not recommended in delinquency cases (only) the complainant is apprised of his or her right of review by Corporation Counsel. Presumably, if the complainant does not pursue the matter, the intake worker's decision is not reviewed by Corporation Counsel and the case is not petitioned; however, it seems rather odd to make review by Corporation Counsel contingent upon the complainant's seeking review while classifying the intake worker's decision as a "recommendation." It would seem that a recommendation is just that--a suggestion which may be considered by Corporation Counsel in its peti-


21
Social services intake worker reviews need for detention or shelter care, with presumption in favor of release
[D.C. Code§16-2310, 16-2311(a)(2) & (b)(1); SCR(Juv.)105(c), 106]
22
DETENTION CRITERIA: same as criteria governing initial detention/release decision of youth services or youth division officer (see supra)
23
SHELTER CARE CRITERIA
Whether shelter care necessary to protect child from physical harm
Relevant Considerations
1. Abusive or threatening conduct by member(s) of family or household.
2. Dangerous conduct or threats by persons in neighborhood or environment, against which child's parents, guardian, or custodian cannot provide adequate protection.
3. Other danger to child's health or welfare requiring supervision short of detention.
Whether shelter care necessary to provide child with supervision & care, where child is without parent, guardian, custodian, or other supervising person or agency, child appears unable to care for himself, and family unable to care for child through alternative arrangements
Relevant Considerations
1. Age
2. Adequacy & duration of, and extent of adjustment to, present living arrangement, including evidence or likelihood of serious harm to child's physical or mental health resulting from such arrangement.
24
Detention mandatory if child charged with homicide, forcible rape, armed robbery, attempt to commit or assault with intent to commit any of above, burglary I, or abscondence from court-ordered detention
[SCR(Juv.)106(a)(6)]

tioning decision, but which in no way detracts from Corporation Counsel's authority to petition every case if it so desires, regardless of whether review is sought by the complainant.

In practice, Corporation Counsel has total authority for the petitioning decision with Social Services having little, if any, input. Although Corporation Counsel states that the intake worker's recommendation is given consideration, the probation officers who work in intake state that Corporation Counsel makes its petitioning decision before it ever sees the recommendation. According to these probation officers, only in community cases (a small minority) do they have a chance to have real input into the petitioning decision, and if they feel a case should not be petitioned, they must fill out a two-page "Closing Summary" requiring a narrative description of the child's attitude, court history, social adjustment, relationship with family, school or work situation, response to any services offered by the probation officers, and other reasons for the recommendation. The only requirement if petitioning is recommended is that the intake worker fill out a one-page non-narrative "Report of Preliminary Investigation," in which applicable boxes must be checked, depending on the recommendation. One might question why a more stringent justification is required of Social Services when they decide to recommend against petitioning (and vice versa).

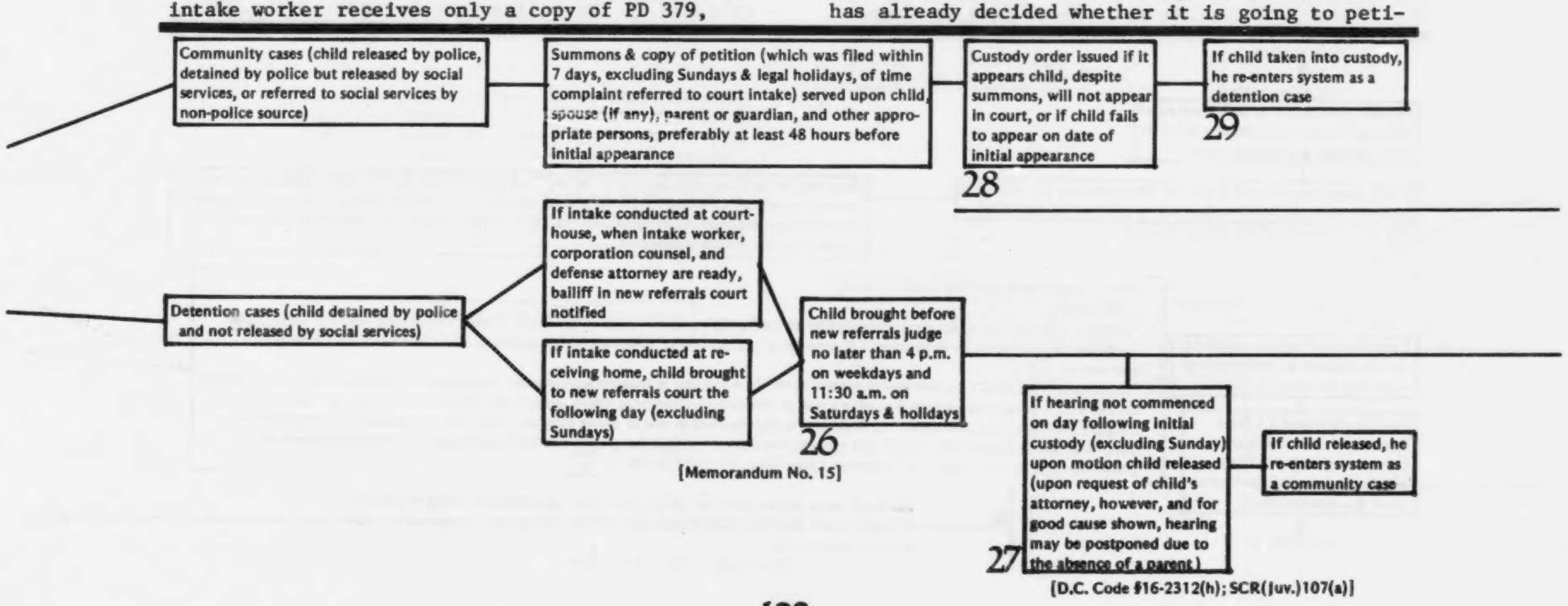
Two other factors inhibiting any real input into the petitioning decision are lack of time to adequately investigate a child's home and school situation, and lack of access to PD Form 202A, a narrative written by the arresting officer describing in detail the circumstances surrounding the alleged offense. The first factor applies more to detention than community cases because in community cases the intake worker has an extra


[SCR(Juv.)106(a)(5)]
Detention appears necessary under criteria, but child's living arrangement and degree of supervision justify release
Intake worker finds detention unnecessary
25
Intake worker finds detention necessary (detention case)(no PINS admitted to detention facility unless ordered by judge or required under detention criteria to protect child from physical harm)
Intake worker finds shelter care necessary (detention case)(no child found in need of shelter care shall be placed in detention, unless independently found in need of detention)
Intake worker finds shelter care unnecessary
Child released to parent, guardian, custodian, or other appropriate person or agency (community case)
Child released to parent, guardian, custodian, or other appropriate person or agency (community case)

day to complete the investigation. In detention cases, the worker must interview the child, contact the parents, and try to learn as much about the child's home environment as possible before the detention hearing, which is held the same day. If there is a heavy flow of children or if children are brought to the Intake Unit late in the day, this interview and investigation are severely curtailed. In these situations (which appear to be quite frequent), filling out a detailed "Closing Summary" is impracticable--which makes it almost impossible to recommend against petitioning.

The second factor inhibiting input into the petitioning decision involves lack of adequate information concerning the circumstances surrounding the alleged offense. For some reason, Corporation Counsel is given a detailed description of these circumstances, but Social Services is not. The intake worker receives only a copy of PD 379, which includes a statement of facts comprising two or three sentences at most. According to SCR(Juv.) 103(a)(3), the intake worker must consider mitigating circumstances surrounding the offense in making his or her petitioning recommendation, yet the work is deprived of the detailed police version of these circumstances. Corporation Counsel, on the other hand, receives copies of PD 202A and PD 379, and speaks to the arresting officer before Intake is even notified of a new case.

For the aforementioned reasons--the requirement that a "Closing Summary" be written up if petitioning is not recommended; lack of time to conduct an adequate investigation of the child's family situations; lack of access to information regarding the circumstances surrounding the offense; and most importantly, the realization that more likely than not Corporation Counsel has already decided whether it is going to peti-


Community cases (child released by police, detained by police but released by social services, or referred to social services by non-police source)
Summons & copy of petition (which was filed within 7 days, excluding Sundays & legal holidays, of time complaint referred to court intake) served upon child, spouse (if any), parent or guardian, and other appropriate persons, preferably at least 48 hours before initial appearance
Custody order issued if it appears child, despite summons, will not appear in court, or if child fails to appear on date of initial appearance
28
If child taken into custody, he re-enters system as a detention case
29
Detention cases (child detained by police and not released by social services)
If intake conducted at courthouse, when intake worker, corporation counsel, and defense attorney are ready, bailiff in new referrals court notified
If intake conducted at receiving home, child brought to new referrals court the following day (excluding Sundays)
Child brought before new referrals judge no later than 4 p.m. on weekdays and 11:30 a.m. on Saturdays & holidays
26
[Memorandum No. 15]
If hearing not commenced on day following initial custody (excluding Sunday) upon motion child released (upon request of child's attorney, however, and for good cause shown, hearing may be postponed due to the absence of a parent)
27
If child released, he re-enters system as a community case
[D.C. Code §16-2312(h); SCR(Juv.)107(a)]

tion the case--in detention cases the probation officers responsible for intake always check the box labeled "Recommend Petitioning." Because more time is available in community cases, a more thorough investigation can be conducted, and an intake worker who feels strongly that a case should not be petitioned may recommend against petitioning. If this is done, Corporation Counseling attempts to contact the arresting officer (or other complainant) and ask for his or her opinion of the recommendation. Invariably the complainant wants the case prosecuted. According to one Assistant Corporation Counsel, approximately 73 percent of all arrests are petitioned.

Obviously, the petitioning decision is not treated as a quasi-appeal procedure in which Social Services has a great deal of influence.

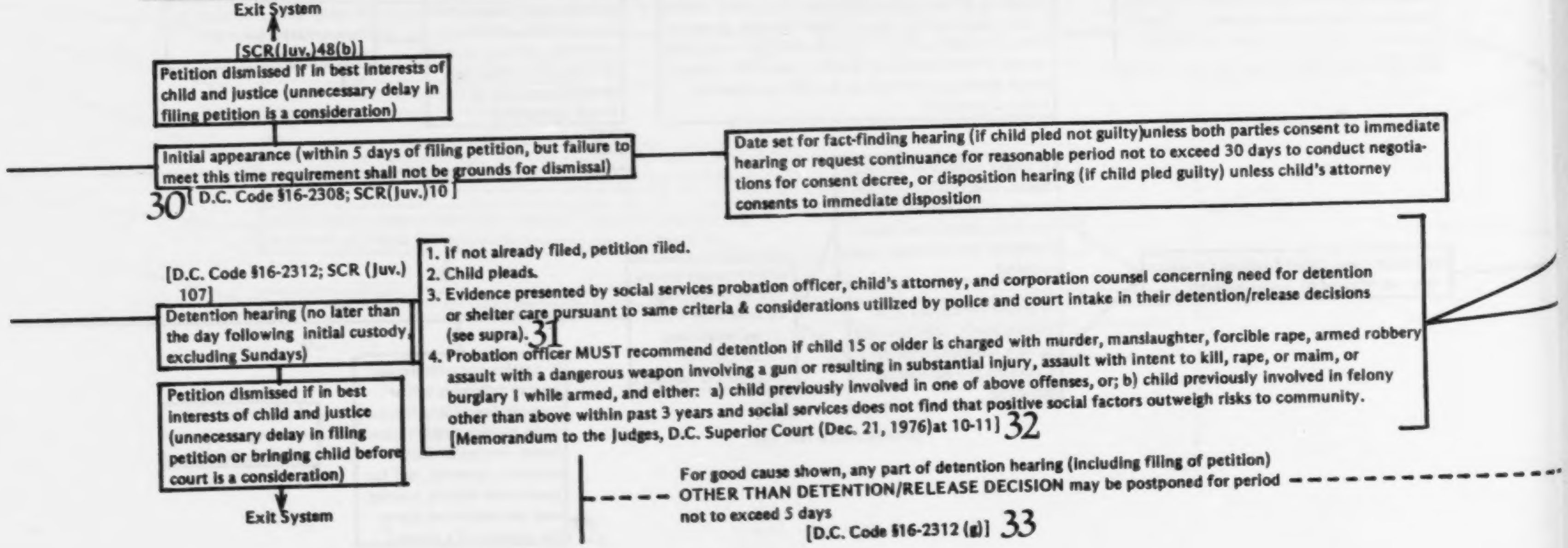
19. Although D.C. Code sec. 16-2305(d) excludes Sundays and legal holidays from the seven-day period within which a petition may be filed, SCR(Juv.) 102(e) makes no mention of this exclusion.

20. All that the intake worker at the RHC receives from the arresting officer is a copy of PD 379, which does not expressly set forth the reasons why the child was not released pending his or her initial hearing.

IJA-ABA Juvenile Standards

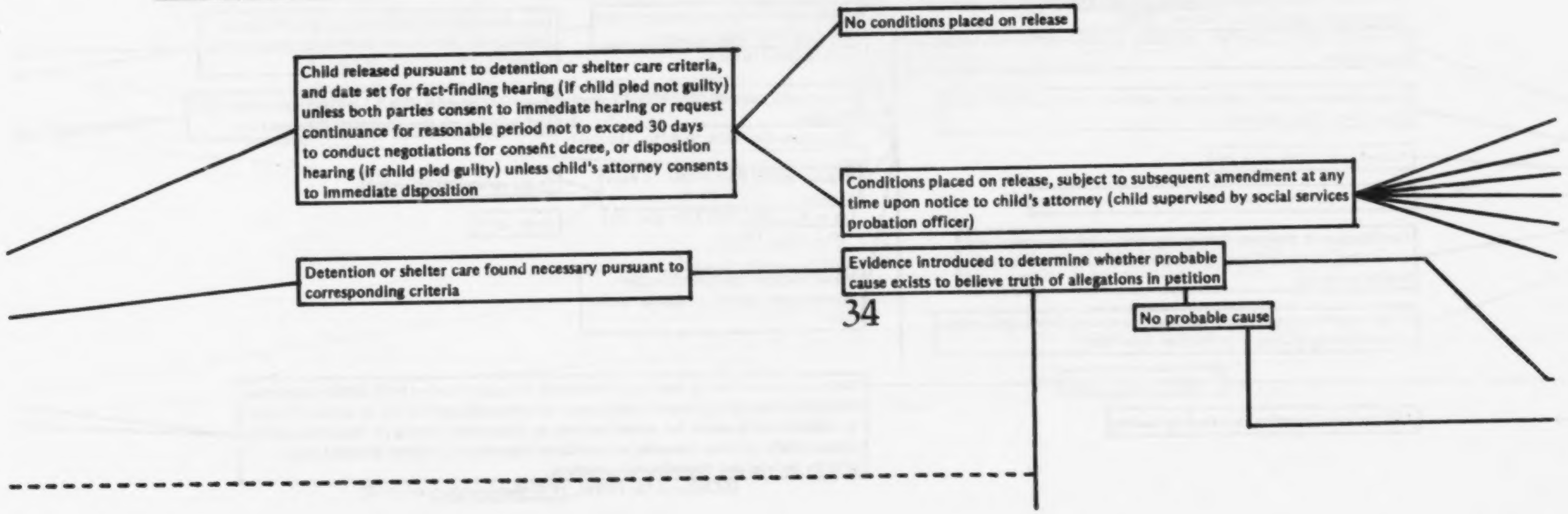
Standard 5.3D (Interim Status) states that the reasons for the officer's decision not to release the child should be recorded in the arrest report.

21. Because Memorandum To The Judges No. 15., D.C. Superior Court (September 26, 1978) replaced the prior procedure, in which all children not released by the police were brought to the RHC,


Exit System
[SCR(Juv.)48(b)]
Petition dismissed if in best interests of child and justice (unnecessary delay in filing petition is a consideration)
Initial appearance (within 5 days of filing petition, but failure to meet this time requirement shall not be grounds for dismissal)
30 [D.C. Code §16-2308; SCR(Juv.)10]
Date set for fact-finding hearing (if child pled not guilty) unless both parties consent to immediate hearing or request continuance for reasonable period not to exceed 30 days to conduct negotiations for consent decree, or disposition hearing (if child pled guilty) unless child's attorney consents to immediate disposition
[D.C. Code §16-2312; SCR (Juv.) 107]
Detention hearing (no later than the day following initial custody, excluding Sundays)
1. If not already filed, petition filed.
2. Child pleads.
3. Evidence presented by social services probation officer, child's attorney, and corporation counsel concerning need for detention or shelter care pursuant to same criteria & considerations utilized by police and court intake in their detention/release decisions (see supra). 31
4. Probation officer MUST recommend detention if child 15 or older is charged with murder, manslaughter, forcible rape, armed robbery assault with a dangerous weapon involving a gun or resulting in substantial injury, assault with intent to kill, rape, or maim, or burglary I while armed, and either: a) child previously involved in one of above offenses, or; b) child previously involved in felony other than above within past 3 years and social services does not find that positive social factors outweigh risks to community.
[Memorandum to the Judges, D.C. Superior Court (Dec. 21, 1976)at 10-11] 32
Petition dismissed if in best interests of child and justice (unnecessary delay in filing petition or bringing child before court is a consideration)
Exit System
For good cause shown, any part of detention hearing (including filing of petition) OTHER THAN DETENTION/RELEASE DECISION may be postponed for period not to exceed 5 days
[D.C. Code §16-2312 (g)] 33

with a new procedure, whereby children for whom police paperwork has been completed before 3 p.m. on weekdays and 10:30 a.m. on Saturdays and holidays are brought directly to court, the law is unclear whether Social Services has the authority to release children brought directly to court so as to make a judicial detention/release decision unnecessary. (The child would become a "community case" and his initial court hearing would be in the form of an "initial appearance" pursuant to D.C. Code sec. 16-2308). Both D.C. Code sec. 16-2311 and SCR(Juv.) 105 state that _all_ children taken into custody shall be brought before the Director of Social Services (in practice, a member of his staff) who shall review the need for detention. However, this provision was enacted upon the presumption that all of these children were about to be admitted to a place of detention or shelter care. A reading of the 1978 _Memorandum_ suggests that this new procedure was intended to give the detained child an expedited initial hearing at the expense of bypassing the intervening discretion of Social Services to release the child. This is what has happened in practice. A child who is arrested and brought directly to court is never released by a Social Services probation officer.

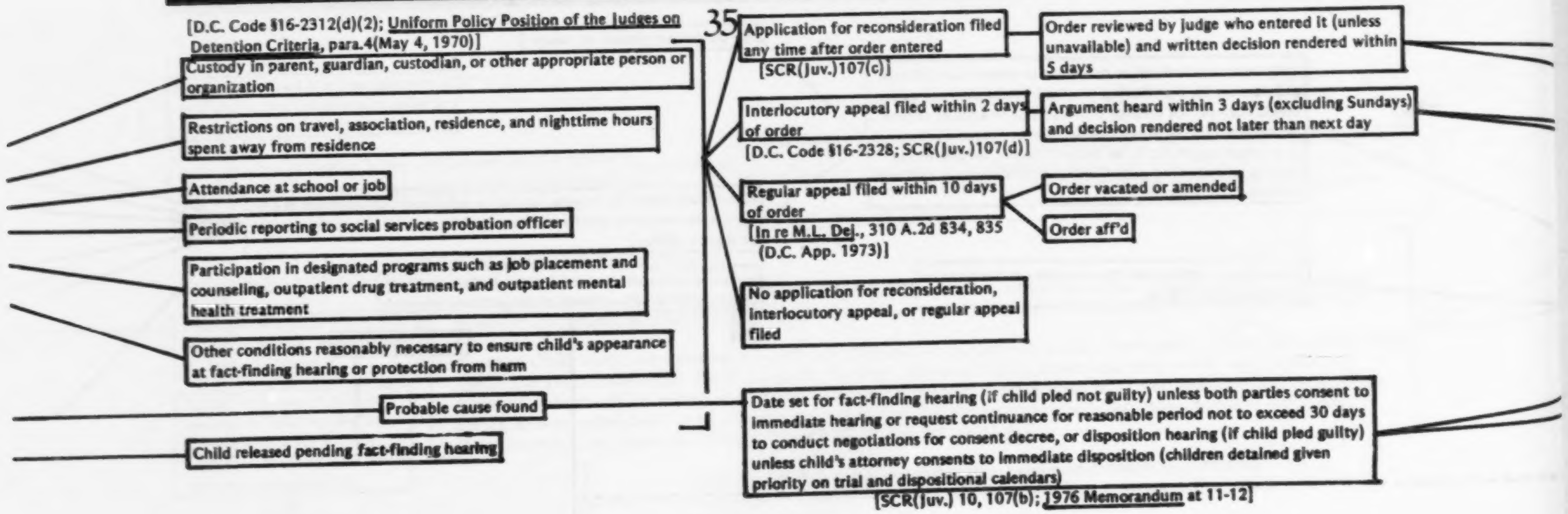
If a child is brought to the RHC (3 p.m. to 6 a.m. on weekdays and after 10:30 a.m. on Saturdays and holidays), the intake worker located there _does_ make a detention/release decision. Although SCR (Juv.) 105(c) states that Social Services "shall, if possible, release the child," according to one intake worker at the RHC, approximately 75 percent of the children brought to the RHC are not released. The major problem facing these intake workers is lack of information. They must base their decision solely upon the PD 379 and an interview with the child (and parents, if they can be located). Again, there is a real need for a more detailed version of the circumstances sur-


No conditions placed on release
Child released pursuant to detention or shelter care criteria, and date set for fact-finding hearing (if child pled not guilty) unless both parties consent to immediate hearing or request continuance for reasonable period not to exceed 30 days to conduct negotiations for consent decree, or disposition hearing (if child pled guilty) unless child's attorney consents to immediate disposition
Conditions placed on release, subject to subsequent amendment at any time upon notice to child's attorney (child supervised by social services probation officer)
Detention or shelter care found necessary pursuant to corresponding criteria
Evidence introduced to determine whether probable cause exists to believe truth of allegations in petition
No probable cause

rounding the alleged offense (i.e., PD 202A). Furthermore, if a parent or guardian cannot come down to the RHC to pick up the child, the intake worker cannot release the child, regardless of the charge or circumstances.

In addition to deciding whether to release the child, the intake worker at the RHC, like his or her counterpart at the court, fills out a four-page "Social Summary" containing family information, prior record (if any), social and psychological information, school information, drug history (if any), employment information, and recommendations. The following morning, this summary is sent to the court along with the child, where it is reviewed by a Social Services probation officer, or if the child is already an SRA ward, an SRA court liaison worker. See note 15 supra. One intake worker at the RHC complained that often children are brought to the RHC just before the 6 a.m. cut-off, and that in these cases there is insufficient time to complete the "Social Summary" and make an informed detention/release decision because the child, if not released, must be transported to court by 6:10 a.m. If for lack of time these children are routinely sent to court for a detention hearing, they lose the benefit of having their detained status screened by Social Services.

In concluding, although children brought directly to court by the police benefit from an expedited initial hearing, they lose the benefit of having their detained status screened by Social Services as well as the police (as mentioned in note 11 supra, children for whom police paperwork is completed while court is in session are never released pending the factfinding hearing, two points at which a child's status may change from "detained" to "community" are eliminated.


[D.C. Code §16-2312(d)(2); Uniform Policy Position of the Judges on Detention Criteria, para.4(May 4, 1970)]
Custody in parent, guardian, custodian, or other appropriate person or organization
Restrictions on travel, association, residence, and nighttime hours spent away from residence
Attendance at school or job
Periodic reporting to social services probation officer
Participation in designated programs such as job placement and counseling, outpatient drug treatment, and outpatient mental health treatment
Other conditions reasonably necessary to ensure child's appearance at fact-finding hearing or protection from harm
Probable cause found
Child released pending fact-finding hearing
35
Application for reconsideration filed any time after order entered
[SCR(Juv.)107(c)]
Order reviewed by judge who entered it (unless unavailable) and written decision rendered within 5 days
Interlocutory appeal filed within 2 days of order
[D.C. Code §16-2328; SCR(Juv.)107(d)]
Argument heard within 3 days (excluding Sundays) and decision rendered not later than next day
Regular appeal filed within 10 days of order
[In re M.L. Dej., 310 A.2d 834, 835 (D.C. App. 1973)]
Order vacated or amended
Order aff'd
No application for reconsideration, interlocutory appeal, or regular appeal filed
Date set for fact-finding hearing (if child pled not guilty) unless both parties consent to immediate hearing or request continuance for reasonable period not to exceed 30 days to conduct negotiations for consent decree, or disposition hearing (if child pled guilty) unless child's attorney consents to immediate disposition (children detained given priority on trial and dispositional calendars)
[SCR(Juv.) 10, 107(b); 1976 Memorandum at 11-12]

IJA-ABA Juvenile Standards

Standard 5.3E (Interim Status) states that the officer should notify the intake worker "of all relevant factors concerning the juvenile and the arrest," so that he or she may make an informed detention/release decision. Again, the intake workers at the RHC receive only the PD 379, and are deprived of the more detailed information contemplated by Standard 5.3E.

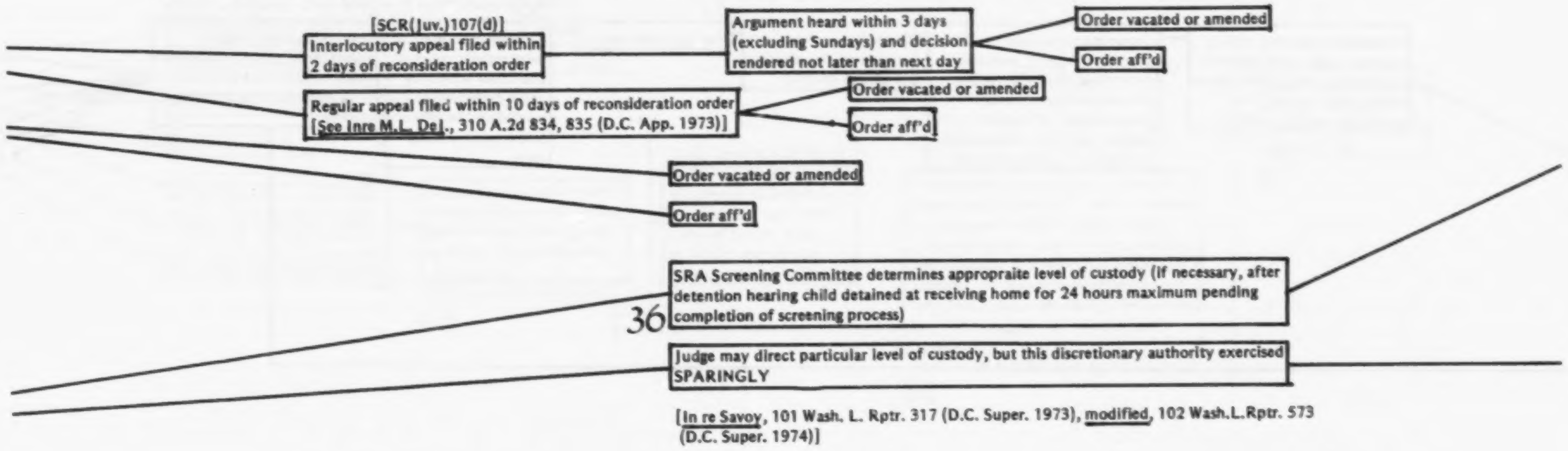
Standard 9.2 (Interim Status) states that "(i)t should be the policy of prosecutors to encourage the police and other interim decision makers to release accused juveniles with a citation or without forms of control."

22. According to an intake worker at the RHC, there are only two criteria upon which the decision whether to detain or release is based: 1) the nature of the charge, and 2) the number of any past charges, regardless of whether they resulted in conviction.

IJA-ABA Juvenile Standards

Standard 6.6A (Interim Status) requires the intake worker to release the child unless either:

> 1) *the child is charged with a violent crime which if committed by an adult would be punishable by a sentence of one year or more (felony) and which, if proven, would be likely to result in the child's commitment to a secure facility (i.e., Children's Center), and one or more of the following is present:*
>
> a) *the charge is first or second degree murder;*
>
> b) *the child is already under the*


[SCR(Juv.)107(d)]
Interlocutory appeal filed within 2 days of reconsideration order
Argument heard within 3 days (excluding Sundays) and decision rendered not later than next day
Order vacated or amended
Order aff'd
Regular appeal filed within 10 days of reconsideration order [See Inre M.L. Del., 310 A.2d 834, 835 (D.C. App. 1973)]
Order vacated or amended
Order aff'd
Order vacated or amended
Order aff'd
SRA Screening Committee determines appropraite level of custody (If necessary, after detention hearing child detained at receiving home for 24 hours maximum pending completion of screening process)
36
Judge may direct particular level of custody, but this discretionary authority exercised SPARINGLY
[In re Savoy, 101 Wash. L. Rptr. 317 (D.C. Super. 1973), modified, 102 Wash.L.Rptr. 573 (D.C. Super. 1974)]

    jurisdiction of a juvenile court by reason of predispositional release, probation, or parole;
    - c) *the child is in abscondence from court-ordered commitment under a prior adjudication;*
    - d) *the child has a "demonstrable recent record of willful failure to appear at juvenile proceedings," and the intake worker determines that no less restrictive alternative will ensure the child's appearance in court; or*

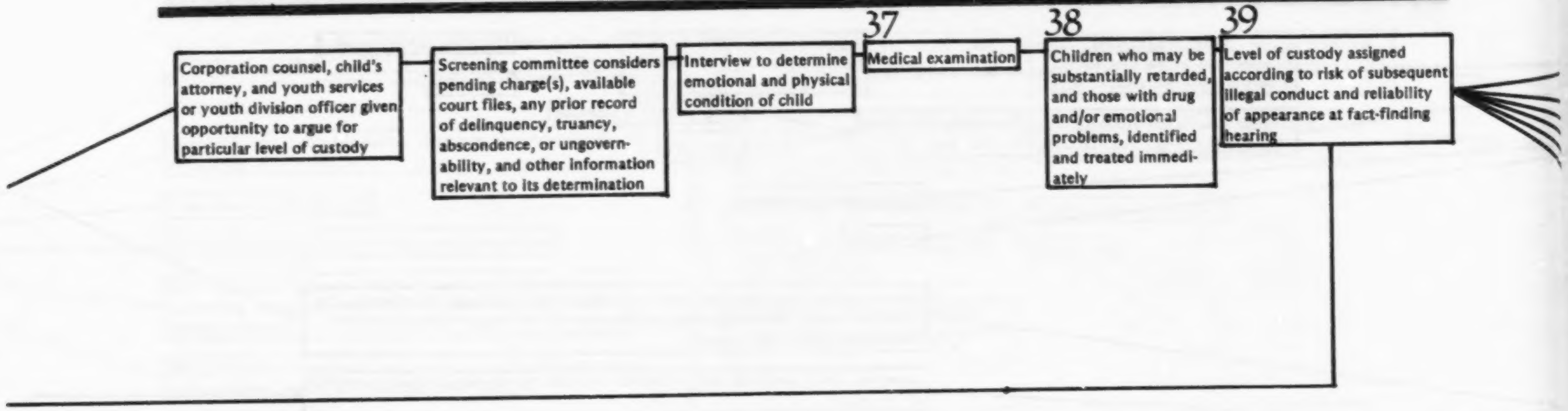
2) *the child is verified as a fugitive from another jurisdiction, and an official from that jurisdiction has formally requested the child be detained.*

If a child falls within either of the above two categories, under Standard 6.6B (Interim Status) the intake worker has discretion to detain or release the child. The worker, however, should first consider placement in available diversion programs, or other alternatives short of detention, which would reasonably reduce the risk of misconduct or nonappearance in court, Standard 6.6C.1 (Interim Status). If such placement or alternatives are deemed inappropriate, the intake worker should "explicitly state in writing the reasons for rejecting each of these forms of release." Id.

23. The intake worker at the RHC has only two alternatives available--release or overnight detention at the RHC. There is no overnight placement in a shelter house.

IJA-ABA Juvenile Standards

Standard 6.6C.3 (Interim Status) states that


37
38
39
Corporation counsel, child's attorney, and youth services or youth division officer given opportunity to argue for particular level of custody
Screening committee considers pending charge(s), available court files, any prior record of delinquency, truancy, absconsence, or ungovernability, and other information relevant to its determination
Interview to determine emotional and physical condition of child
Medical examination
Children who may be substantially retarded, and those with drug and/or emotional problems, identified and treated immediately
Level of custody assigned according to risk of subsequent illegal conduct and reliability of appearance at fact-finding hearing

absent clear and convincing evidence that a child, if released, would be a serious threat to the physical safety of others or would in all likelihood not appear in court, the intake worker should place the child in "nonsecure detention," preferably a foster home.

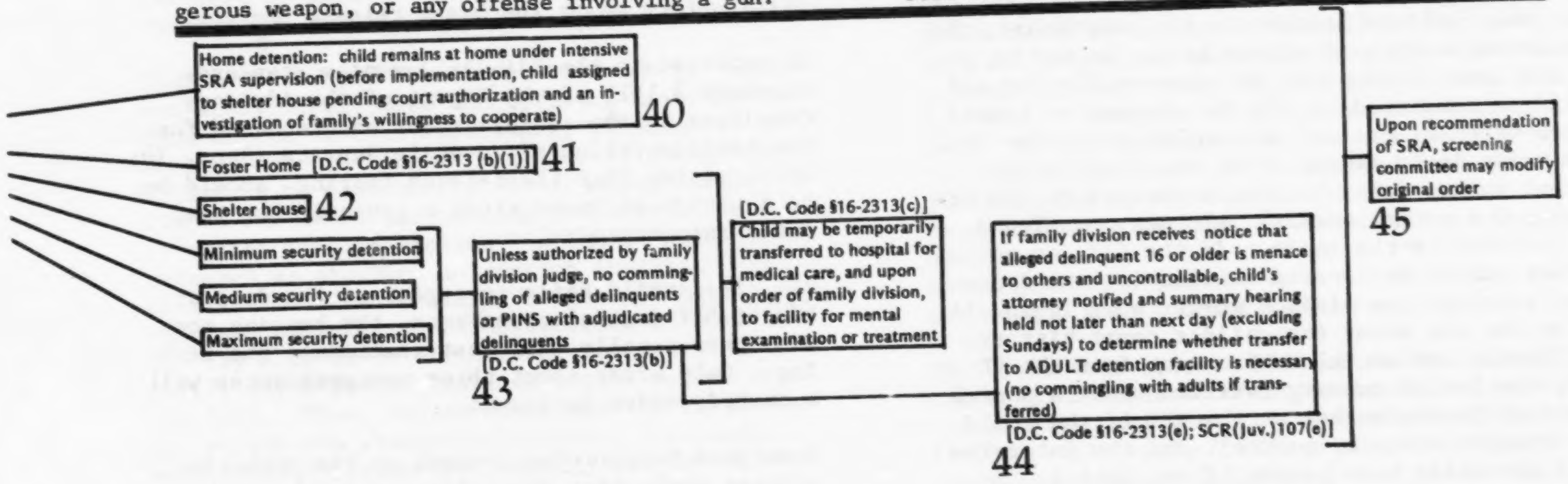
Standard 6.7 (Interim Status) states that "protective detention" (protective supervision) in a nonsecure facility should be restricted to situations where all less restrictive alternatives have been considered, the child would be in immediate danger of serious bodily harm if released, and the child voluntarily and in writing requests such detention.

24. In addition to being detained for one of the listed offenses, a child is never released if he or she has five or more previous charges or is charged with statutory rape, assault with a dangerous weapon, or any offense involving a gun. Moreover, a child charged with robbery, force, and violence is almost always detained, and a child charged with burglary 1 might be released upon sufficient justification.

IJA-ABA Juvenile Standards

Standard 6.6B (Interim Status) eliminates the identification of particular circumstances under which detention is mandatory, and states that "(n)o category of alleged conduct or background in and of itself and should justify a failure to exercise discretion to release."

25. A child, charged with being in need of supervision, who is brought by police to the RHC, is almost always detained. According to an intake worker at the RHC, this is because a parent is often the complainant and the child and/or parent would not be safe if the child were released and sent home.


Home detention: child remains at home under intensive SRA supervision (before implementation, child assigned to shelter house pending court authorization and an investigation of family's willingness to cooperate)
40
Foster Home [D.C. Code §16-2313 (b)(1)]
41
Shelter house
42
Minimum security detention
Medium security detention
Maximum security detention
Unless authorized by family division judge, no commingling of alleged delinquents or PINS with adjudicated delinquents
[D.C. Code §16-2313(b)]
43
[D.C. Code §16-2313(c)]
Child may be temporarily transferred to hospital for medical care, and upon order of family division, to facility for mental examination or treatment
If family division receives notice that alleged delinquent 16 or older is menace to others and uncontrollable, child's attorney notified and summary hearing held not later than next day (excluding Sundays) to determine whether transfer to ADULT detention facility is necessary (no commingling with adults if transferred)
[D.C. Code §16-2313(e); SCR(Juv.)107(e)]
44
Upon recommendation of SRA, screening committee may modify original order
45

26. The time at which a child is brought before the judge varies according to the caseload. All children brought to the courthouse by 3 p.m. on weekdays and 10:30 a.m. (may vary) on Saturdays and holidays go before the judge, even if it is after 4 p.m. or 11:30 a.m., respectively.

27. According to Memorandum To The Judges No. 15, supra note 21, if the child is already an SRA ward and his or her social file and/or assigned social worker cannot be located, the judge shall make an immediate decision whether to release the child to a friend or relative, or place him or her under protective supervision. The case is then returned to New Referrals Court the next court day. This procedure appears to contravene D.C. Code sec. 16-2312(g), which prohibits postponement of the detention/release decision, and thus is never implemented.

Once the child is brought to the courthouse, the detention hearing is always held. According to an SRA court liaison worker responsible for all children committed to SRA who abscond or commit a new offense, part of the intake procedure for SRA wards is to consult with the child's SRA social worker (all children committed to SRA are assigned a social worker), who has compiled a social file of the child. If the file or social worker cannot be located in time for the detention hearing, the liaison worker must learn all he or she can about the child's court history, and family and social environment from the PD 379, the Social Summary (written up by a Social Services intake worker at the RHC if the child was brought there by police), and the interview with the child (and parent if available). In addition, although the Social Summary is supposed to be sent from the RHC along with the child, often it is not received in time for the detention hearing. Notwithstanding this lack of information, petitioning is always recommended and the detention hearing is never postponed.

IJA-ABA Juvenile Standards

In accordance with the presumption in favor of release, Standard 7.6 (Interim Status) refers to the initial hearing of a detained child as the "release hearing" rather than "detention hearing." According to Standard 7.6A, the release hearing should be held within 24 hours of petitioning. If the child is not released by the intake worker, Standard 6.5D.2 (Interim Status) requires the worker to file a petition "no later than the next court session, or within twenty-four hours after the juvenile's arrival at the intake facility, whichever is sooner." Thus, the standards permit 48-hour custody over the child before he or she has a release hearing.

In contrast to the IJA-ABA Juvenile Standards, Standard 3.161b of the Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice (Sept. 30, 1976) states that the release hearing "should be held within 24 hours after a juvenile has been taken into custody."

28. If a child fails to appear on the date of his or her initial appearance, the hearing commissioner usually will just reschedule the hearing. Only after about three nonappearances will a custody order be issued.

Sometimes Corporation Counsel or the probation officer feels that the police or intake worker at the RHC should not have released the child. In these cases, one or the other may contact the hearing commissioner and ask that the child be removed from the initial appearance calendar, so that a detention hearing can be held instead. The child and his or her parents are not notified of this change until they arrive at court (for the anticipated initial appearance), and a child who had expected to retain his community status, pending the factfinding hearing, more likely than not is ordered detained by the judge at this "surprise" detention hearing. This procedure is informally known as "conversion," and it would appear to contravene the intent if not the statutory language of D.C. Code secs. 16-2308 to 2312.

D.C. Code sec. 16-2308 states that "(t)he initial appearance...shall be at the time set forth in the summons..." When a "conversion" occurs, a detention hearing rather than an initial appearance is held at the time set forth in the summons.

This same section further states that it "shall not apply in any case where, prior to or at the time of the initial appearance, a detention or shelter care hearing is required by section 16-2312." D.C. Code sec. 16-2312, which establishes the detention hearing procedure, expressly states that it applies "(w)hen a child is not released as provided in section 16-2311." Id. at (a). Children who are "converted" have been released pursuant to either section 16-2311(a)(1) (by a YS or YD officer) or section 16-2311(b)(1) (by a Social Services intake worker at the RHC). Thus, unless one wished to unreasonably strain the statutory language, D.C. Code sec. 16-2312 (detention hearing) should not be applied once a child becomes a community case.

In addition, Corporation Counsel is not within the group of "persons responsible for determining whether detention or shelter care is warranted prior to the factfinding hearing." (D.C. Code sec. 16-2310(c)). Yet, in effect a "conversion" is based upon just such a determination.

In further support of the above argument, D.C. Code sec. 16-2312(b) requires that prompt notice of the detention hearing be given to the child, spouse (if any), and parent, guardian, or custodian. Surprising the child and his or her parent upon arrival in court can hardly be called "prompt notice."

It is apparent that Congress intended a child in custody be screened for release by the police, the intake worker, and the judge at a detention hearing, so as to ensure that pretrial detention is the exception rather than the rule. See D.C. Code secs. 16-2310, 16-2311; SCR(Juv.) 105(c). The only valid procedure for reversing any one of these three decisions to release would appear to be a custody order endorsed upon the summons, pursuant to D.C. Code sec. 16-2306(c) and SCR (Juv.) 4. Issuance of a custody order is contingent upon the existence of grounds to believe "the child may leave or be removed from the jurisdiction of the Superior Court or will not be brought to the hearing, nowithstanding service of the summons." D.C. Code sec. 16-2306(c). Notwithstanding the above, a custody order is not sought when a child is "converted."

29. D.C. Code sec. 16-2306(c) states that if a child is taken into custody pursuant to custody order, "the provisions of sections 16-2309 to 16-2312 shall apply." These sections explain the procedure to be followed in detention cases. Thus, when a custody order is executed the child is supposed to be handled like any other detention case; however, to be voided a custody order

must be quashed by a judge. For this reason, notwithstanding D.C. Code sec. 16-2311(b)(1) which states that Social Services "shall in all cases review the need for detention or shelter care prior to the admission of the child to the place of detention or shelter care" and shall release the child if appropriate under specified detention criteria, a child brought to the RHC under a custody order is not considered for release by the court intake (as mentioned in note 21 *supra*, no children brought directly to court by police are considered by Social Services for release prior to an initial hearing). Since in practice Social Services recommends petitioning in all detention cases (*see* note 18 *supra*), children taken into custody pursuant to a custody order are always recommended for petitioning, and never considered for release by Social Services prior to a detention hearing.

30. Although D.C. Code sec. 16-2308 states that the initial appearance is held before "a judge assigned to the Division," this right is routinely waived and the hearing is held before a hearing commissioner appointed by the Chief Judge of Superior Court. Pursuant to SCR (General Family) D(d), a request for a rehearing before a judge can be made within 3 days. Such requests, however, are rarely if ever made because at an initial appearance the commissioner merely accepts a plea and sometimes places conditions on release (i.e., curfew) which, if appealed, would most likely be affirmed by a judge. A probation officer is not present at the initial appearance.

Sometimes the initial appearance is called the "initial hearing" (*see* SCR(Juv.) 10), but in this narrative the latter term includes both the former and a detention hearing.

31. D.C. Code sec. 16-2310(a) and SCR(Juv.) 106 (a) establish four basic criteria to guide the judge's detention/release decision, at least one of which must be found for the judge to detain the child. Both the Code section and rule state that "(n)o child shall be placed in detention... unless it appears from available information that detention is required to protect the person or property of others or of the child, or to secure the child's presence at the next court hearing." Detention is never justified solely to protect the child's own property, although the above quotation appears to create this justification as a separate criterion.

SCR(Juv.) 106(a) also established specific relevant factors for each of the four criteria, and it is only logical that the factors listed under one criterion are probative of the existence of that criterion only (unless repeated under the other criteria). For example, "severe and chronic alcoholism" is relevant to the determination whether detention is necessary to protect the person of the child, but is not relevant to the determination whether detention is necessary to protect the person of others. On the other hand, "nature and circumstances of the pending charge" is relevant to both the determination whether detention is necessary to protect the person of others as well as the determination whether it is necessary to protect the property of others, and consequently is listed under both criteria.

Notwithstanding the above, this writer has personally witnessed judges disregard and/or circumvent the specificity of the abovementioned relevant factors on numerous occasions, seemingly doing so on the assumption that their discretionary powers somehow permit them to ignore or give lip service to the Superior Court's own juvenile rules in a particular case. Additionally, many judges apply the relevant factors not to the particular criterion under which they are listed, but to a general determination that detention is required. Thus, when pressed by defense counsel many judges will list the specific factors upon which their decision to detain is based, but these factors often are not jointly probative of any one particular criterion. As mentioned above, such an application of SCR(Juv.) 106(a) appears to contravene the purpose behind the rule, the specificity of which is apparently viewed by some judges as a dispensable encroachment upon their inherent discretionary power.

IJA-ABA Juvenile Standards

Standards 7.7 B-C (Interim Status) make the same criteria governing the detention/release decisions of the police and intake worker applicable to the judge at a release (detention) hearing.

32. This nondiscretionary recommendation for detention was originally mandated by Memorandum To The Judges, D.C. Super. Ct. (Dec. 21, 1976) at 10-11. Although the memorandum established this "dangerous recidivist" policy on "an experimental basis" (Id. at 1), it has never officially been rescinded. However, according to Social Services probation officers and the Principal Deputy Clerk of Family Division, the procedures mandated by the memorandum have gradually fallen into disuse--largely because so few children had fallen into the category of "dangerous recidivist" as defined by the memorandum.

33. A "five-day hold" is usually requested by Corporation Counsel if more time is needed to gather evidence in order to determine whether petitioning is practicable, or by the probation officer if a mental examination appears necessary. If a five-day hold is granted, the child is almost always detained at the RHC for the five days.

Although D.C. Code sec. 16-2312(g) states that the judge at a detention hearing "may not postpone the determination of whether detention or shelter care is required," sometimes a judge will grant a five-day hold; the child will be detained at the RHC for 5 days, and when the child is returned to court after 5 days, the judge determines that the child should be released pending his or her factfinding hearing. This practice appears to contravene the provision that the detention/release decision may not be included within the five-day hold.

34. Although D.C. Code sec. 16-2312(e) states that once a judge finds detention or shelter care is required under the applicable criteria, "he shall then hear evidence presented by the Corporation Counsel to determine whether there is probably cause to believe the allegations in the petition are true" (emphasis added), in practice this provision is not deemed a requisite of the system; and at times no probable cause hearing is held unless first requested by the child's attorney.

On occasion, a judge will ask to hear evidence on probable cause before he or she decides to detain or release a child pending the factfinding hearing. In these cases, it would appear the judge is basing his or her detention/release decision largely upon the nature of the circumstances surrounding the alleged offense.

IJA-ABA Juvenile Standards

Standard 4.1 (Pretrial Court Proceedings) provides for a probable cause hearing in all cases (community and detention), unless the factfinding hearing is held within five days of petitioning in a detention case, or 15 days in a community case.

IJA-ABA Juvenile Standards

35. Standard 7.9 (Interim Status) provides for the continual reconsideration of a detention order by the court, with a review hearing being held every seven days or sooner.

36. The judge's discretionary authority to direct a particular level of custody is exercised frequently rather than sparingly. Nonetheless all children are brought to the RHC after their detention hearing and interviewed by a member of the Screening Committee before being sent to a particular facility. If the Committee feels a level or place of detention ordered by the judge is inappropriate, it may contact the judge and seek modification of the order.

The composition of the Screening Committee may vary from two to five SRA staff members--but usually includes at least one social service worker, one mental health worker, and one counselor. A child is interviewed by one member of the Committee, and the results of this interview are presented to the Committee as a whole.

IJA-ABA Juvenile Standards

Standard 7.8A (Interim Status) states that every juvenile court judge should visit all secure facilities within the court's jurisdiction at least once every sixty days--an interesting and perhaps extremely important provision which has no counterpart under D.C. law. This provision is also made applicable to prosecutors under Standard 9.3 (Interim Status).

37. The Screening Committee does not arrange for medical examination. Rather, children are routinely examined upon entering the particular facility to which they are sent.

38. Children with suspected drug problems are referred to DHR's Substance Abuse Administration for counseling. Those with emotional and/or psychiatric problems are usually sent to DHR's Forensic Psychiatry Office for evaluation, and then returned to the RHC with recommendations for placement and/or special treatment.

39. If placement is left to the Screening Committee, all absconders, recidivists, and "Green Line" cases (emotionally disturbed requiring close supervision) are placed in maximum security.

40. All placements in the home detention program are made by the judge at the detention hearing. Under the program, an SRA social service worker has three eye-to-eye-contacts with the supervised child every day.

41. There is no foster care placement for children awaiting their factfinding hearing; however, such placement does exist for adjudicated children.

42. There is usually a waiting list to get into one of the six available shelter houses. Children on the list are temporarily detained at Cedar Knoll in Laurel, Maryland. However, it is not

rare that a child awaiting placement in a shelter house will spend his or her entire period of detention at Cedar Knoll because of lack of available space in one of the shelter houses.

IJA-ABA Juvenile Standards

Standard 10.3 (Interim Status) states:

> *A sufficiently wide range of nonsecure detention and nondetention alternatives should be available to decision makers so that the least restrictive interim status appropriate to an accused juvenile may be selected. The range of facilities available should be reviewed by all concerned agencies annually to ensure that juveniles are not being held in more restrictive facilities because less restrictive facilities are unavailable.*
>
> *A policy should be adopted in each state favoring the abandonment or reduction in size of secure facilities as less restrictive alternatives become available.*

43. In re Savoy, 101 Wash. L. Rptr. 317 (D.C. Super. 1973), modified, 102 Wash. L. Rptr. 573 (D.C. Super. 1974) proscribes use of the RHC for anything other than a "temporary holding facility." Nevertheless, sometimes a judge will order a child detained at the RHC for one of the following reasons: 1) the child is not sufficiently "streetwise" to cope emotionally at the Children's Center in Laurel, Maryland; 2) the child was sexually molested at the Children's Center; 3) the child is on a school or work release program in the D.C. area; 4) the child is awaiting private school placement; or 5) the child is an out-of-state runaway awaiting transfer under the Interstate Compact of Juveniles. At any one time there may be nonadjudicated as well as adjudicated PINS and delinquents, children charged as adults, and possibly even a child found to be neglected located at the RHC; and no efforts are made to prevent commingling. According to a Court Social Services probation officer, commingling occurs at Cedar Knoll as well.

IJA-ABA Juvenile Standards

Standard 10.4 B (Interim Status) prohibits the commingling of delinquents with nondelinquents (PINS or neglected children) in secure detention facilities.

44. The old D.C. Jail ("Annex") has a maximum of 21 spaces for children charged as adults and children transferred from a juvenile facility under D.C. Code sec. 16-2313(e) and SCR(Juv.) 107(e). These children are detained in a separate wing (former infirmary), and according to one administrator, there is no commingling with adults other than adult food servers.

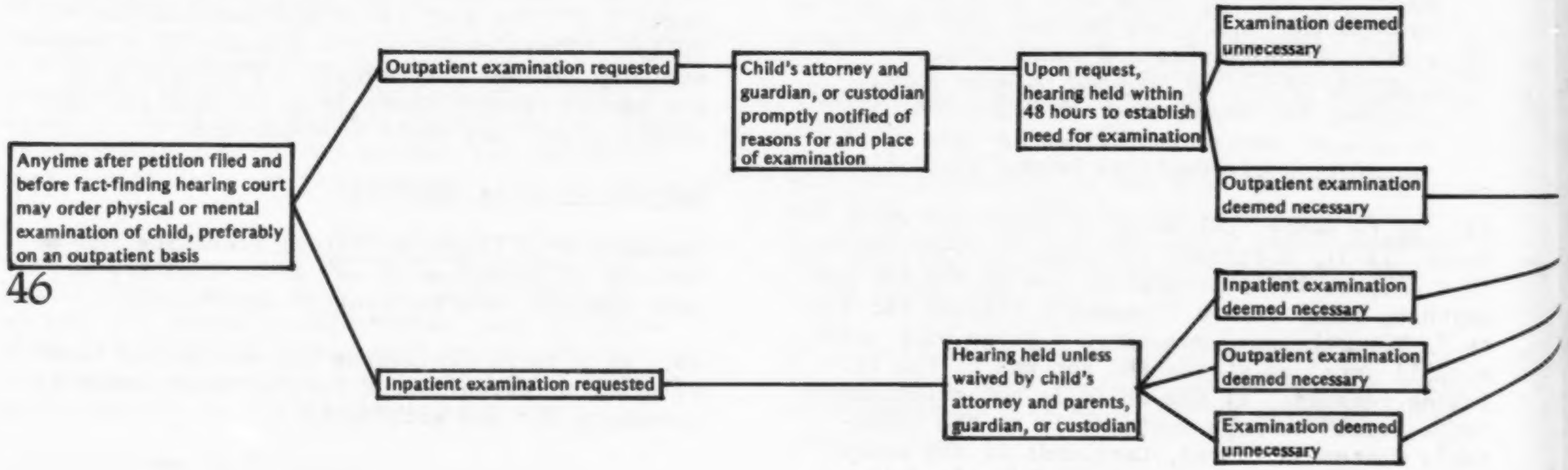
IJA-ABA Juvenile Standards

Standard 10.2 (Interim Status) prohibits the detention of juveniles in any adult facility or part thereof, despite lack of commingling.

45. If a judge designates the particular level or place of detention, a further court order is necessary for any modification.

46. If a child shows signs of mental illness or severe emotional problems, a mental examination is usually requested by the probation officer, Corporation Counsel, or child's attorney at the initial hearing.

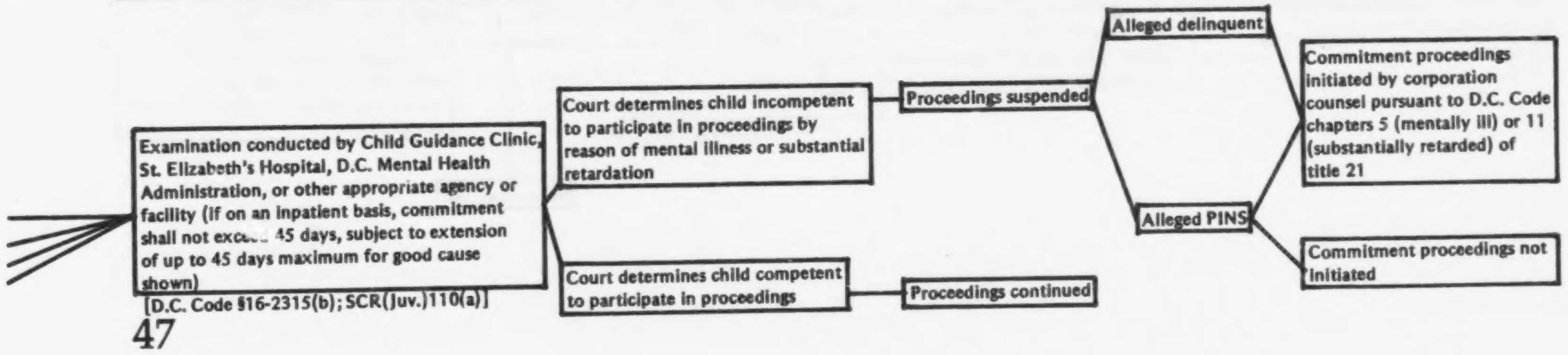
[D.C. Code §16-2315; SCR(Juv.)110]


Anytime after petition filed and before fact-finding hearing court may order physical or mental examination of child, preferably on an outpatient basis
46
Outpatient examination requested
Child's attorney and guardian, or custodian promptly notified of reasons for and place of examination
Upon request, hearing held within 48 hours to establish need for examination
Examination deemed unnecessary
Outpatient examination deemed necessary
Inpatient examination requested
Hearing held unless waived by child's attorney and parents, guardian, or custodian
Inpatient examination deemed necessary
Outpatient examination deemed necessary
Examination deemed unnecessary

47. If a psychological, outpatient examination is ordered, the child is usually sent to the Child Guidance Clinic (part of the Superior Court Social Services Division). If a psychiatric examination is ordered, or if the Child Guidance Clinic finds that such an examination is necessary, the child is sent to the Forensic Psychiatry Office or DHR's Mental Health Administration where he or she is screened by a psychiatrist. If the psychiatrist feels that an in-depth examination is necessary, Forensic Psychiatry may conduct one, or refer the child to either St. Elizabeth's Hospital or Psychiatric Institute.

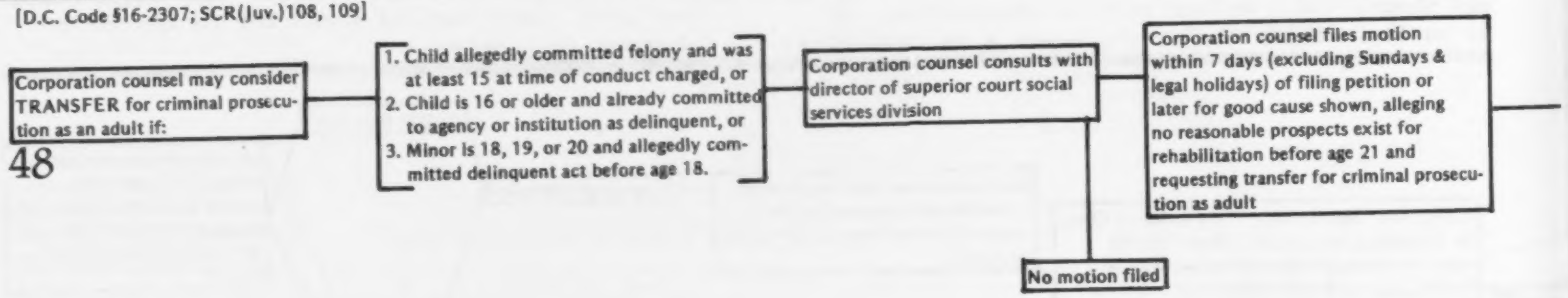
The above referral system is quite chaotic. To add to the confusion, D.C. Code sec. 16-2315 and SCR(Juv.) 110 use the term "mental examination," and when a judge orders such an examination, it is unclear whether he or she means a psychological or psychiatric examination. Additionally, it is questionable whether any judge is professionally capable of determining which type of examination is necessary, when ordering the child evaluated by the Child Guidance Clinic as opposed to the Forensic Psychiatry Office (and vice versa).

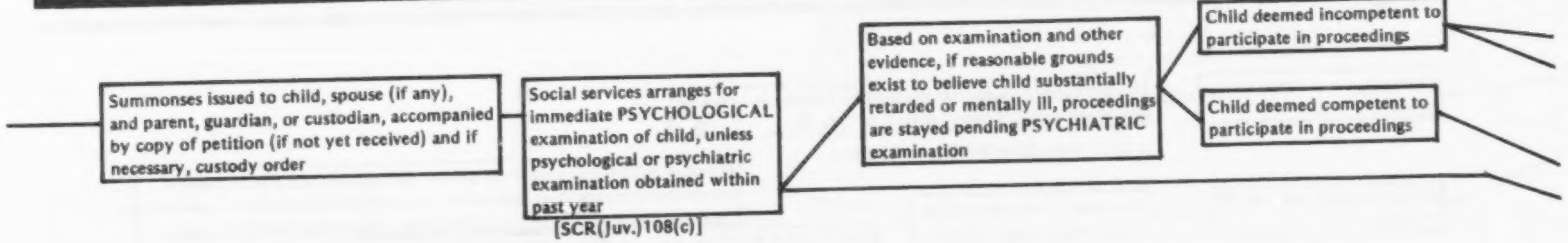
If the examination is ordered on an inpatient basis, it is usually ordered for a period of 40-60 days. This practice appears to contravene D.C. Code sec. 16-2315(b), which precludes the extension of an inpatient examination past 45 days without a showing of good cause. By routinely ordering an inpatient examination on a 40-60 day basis, a judge is transferring the discretion to extend beyond the initial 45-day period, to the facility to which the child is sent. Such an "automatic" extension circumvents the requirement that good cause must be shown before any extension may be granted.

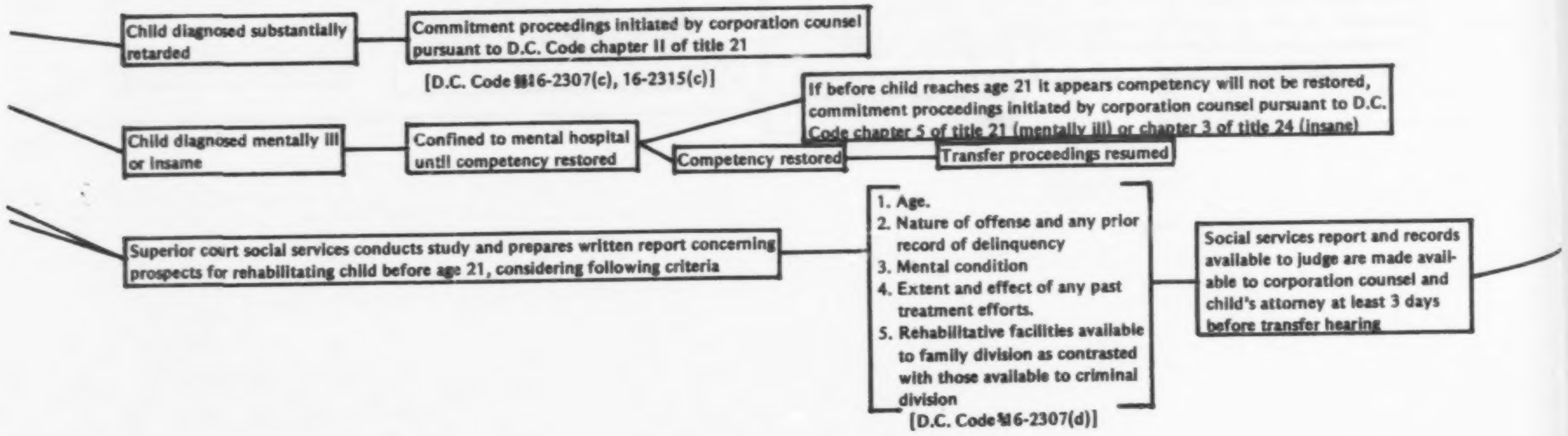

Examination conducted by Child Guidance Clinic, St. Elizabeth's Hospital, D.C. Mental Health Administration, or other appropriate agency or facility (if on an inpatient basis, commitment shall not exceed 45 days, subject to extension of up to 45 days maximum for good cause shown)
[D.C. Code §16-2315(b); SCR(Juv.)110(a)]
47
Court determines child incompetent to participate in proceedings by reason of mental illness or substantial retardation
Court determines child competent to participate in proceedings
Proceedings suspended
Proceedings continued
Alleged delinquent
Alleged PINS
Commitment proceedings initiated by corporation counsel pursuant to D.C. Code chapters 5 (mentally ill) or 11 (substantially retarded) of title 21
Commitment proceedings not initiated

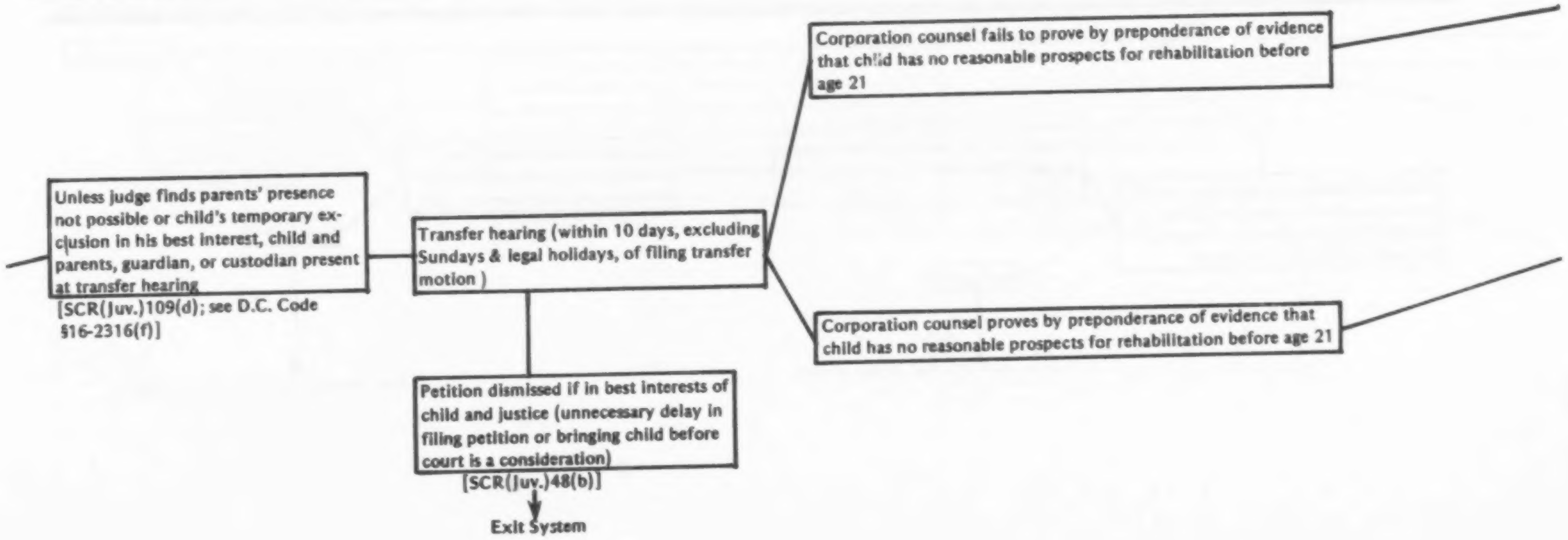
48. According to an Assistant Corporation Counsel, this procedure is rarely used (no more than one per year). Most Social Services probation officers are unfamiliar with the procedure.

[D.C. Code §16-2307; SCR(Juv.)108, 109]


Corporation counsel may consider TRANSFER for criminal prosecution as an adult if:
48
1. Child allegedly committed felony and was at least 15 at time of conduct charged, or
2. Child is 16 or older and already committed to agency or institution as delinquent, or
3. Minor is 18, 19, or 20 and allegedly committed delinquent act before age 18.
Corporation counsel consults with director of superior court social services division
No motion filed
Corporation counsel files motion within 7 days (excluding Sundays & legal holidays) of filing petition or later for good cause shown, alleging no reasonable prospects exist for rehabilitation before age 21 and requesting transfer for criminal prosecution as adult


Summonses issued to child, spouse (if any), and parent, guardian, or custodian, accompanied by copy of petition (if not yet received) and if necessary, custody order
Social services arranges for immediate PSYCHOLOGICAL examination of child, unless psychological or psychiatric examination obtained within past year
[SCR(Juv.)108(c)]
Based on examination and other evidence, if reasonable grounds exist to believe child substantially retarded or mentally ill, proceedings are stayed pending PSYCHIATRIC examination
Child deemed incompetent to participate in proceedings
Child deemed competent to participate in proceedings


Child diagnosed substantially retarded
Commitment proceedings initiated by corporation counsel pursuant to D.C. Code chapter II of title 21
[D.C. Code §§16-2307(c), 16-2315(c)]
Child diagnosed mentally ill or insame
Confined to mental hospital until competency restored
If before child reaches age 21 it appears competency will not be restored, commitment proceedings initiated by corporation counsel pursuant to D.C. Code chapter 5 of title 21 (mentally ill) or chapter 3 of title 24 (insane)
Competency restored
Transfer proceedings resumed
Superior court social services conducts study and prepares written report concerning prospects for rehabilitating child before age 21, considering following criteria
1. Age.
2. Nature of offense and any prior record of delinquency
3. Mental condition
4. Extent and effect of any past treatment efforts.
5. Rehabilitative facilities available to family division as contrasted with those available to criminal division
[D.C. Code §16-2307(d)]
Social services report and records available to judge are made available to corporation counsel and child's attorney at least 3 days before transfer hearing



Unless judge finds parents' presence not possible or child's temporary exclusion in his best interest, child and parents, guardian, or custodian present at transfer hearing

[SCR(Juv.)109(d); see D.C. Code §16-2316(f)]

Transfer hearing (within 10 days, excluding Sundays & legal holidays, of filing transfer motion)

Petition dismissed if in best interests of child and justice (unnecessary delay in filing petition or bringing child before court is a consideration)

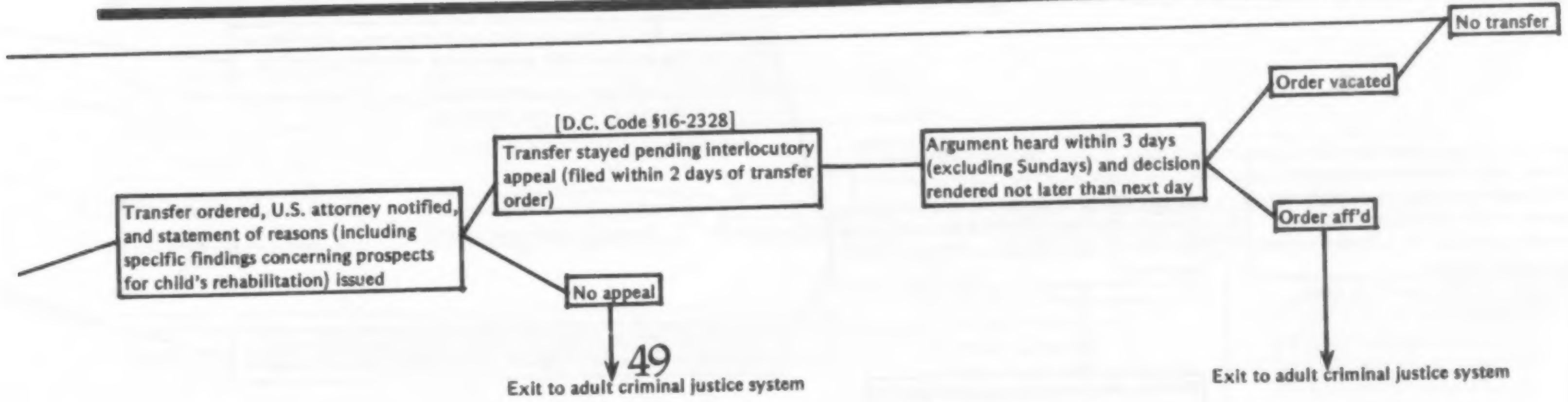
[SCR(Juv.)48(b)]

Exit System

Corporation counsel fails to prove by preponderance of evidence that child has no reasonable prospects for rehabilitation before age 21

Corporation counsel proves by preponderance of evidence that child has no reasonable prospects for rehabilitation before age 21

49. *See* note 14 *supra* for permanent ramifications of transfer to the adult system.

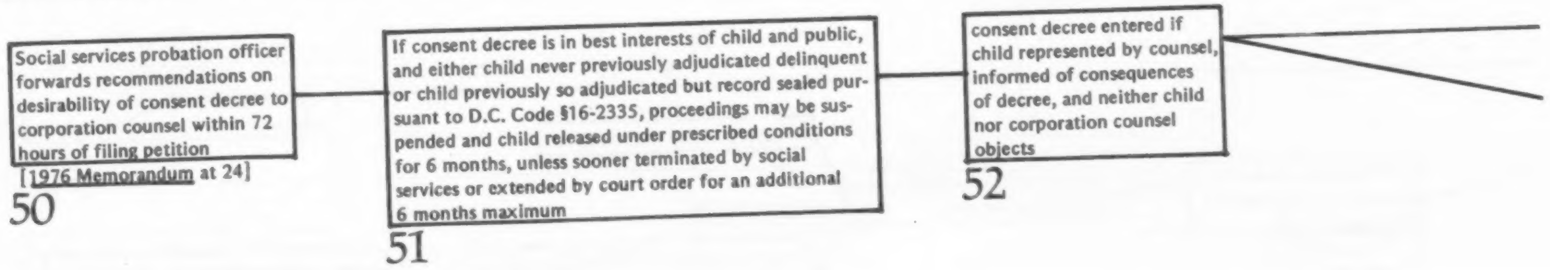

No transfer
Order vacated
[D.C. Code §16-2328]
Transfer stayed pending interlocutory appeal (filed within 2 days of transfer order)
Argument heard within 3 days (excluding Sundays) and decision rendered not later than next day
Transfer ordered, U.S. attorney notified, and statement of reasons (including specific findings concerning prospects for child's rehabilitation) issued
Order aff'd
No appeal
49
Exit to adult criminal justice system
Exit to adult criminal justice system

50. A probation officer fills out a Consent Decree Screening Sheet at the intake interview for community cases and within ten days of detention cases.

51. The Screening Sheet used by Social Services lists three prerequisites for a consent decree: 1) no prior convictions; 2) no prior consent decrees; and 3) appropriate offense (non-felony). These criteria are more stringent than those listed in SCR(Juv.) 104(a).

52. Corporation Counsel will not seek a consent decree unless first requested by the child's attorney, and will not enter one if Social Services recommends against it.

[D.C. Code §16-2314; SCR(Juv.)104]

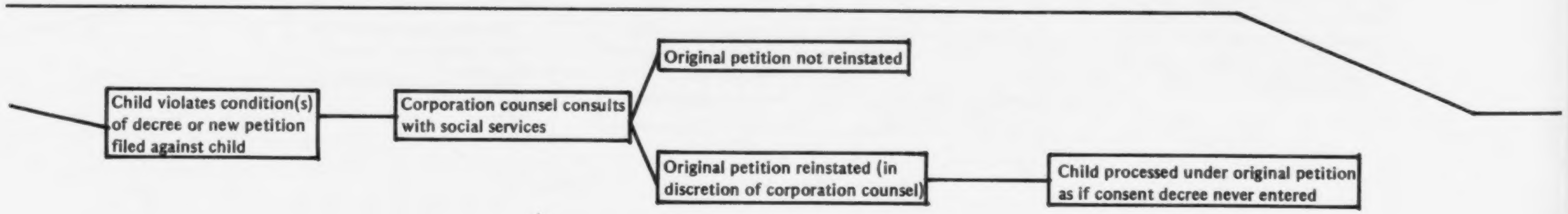


Social services probation officer forwards recommendations on desirability of consent decree to corporation counsel within 72 hours of filing petition

[1976 Memorandum at 24]

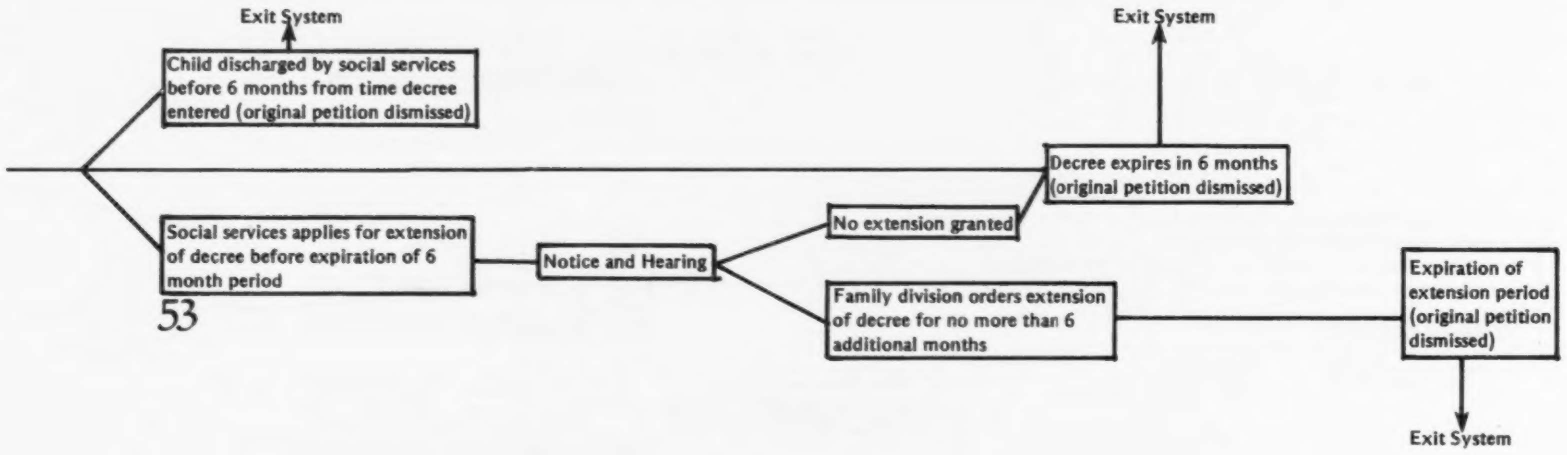
If consent decree is in best interests of child and public, and either child never previously adjudicated delinquent or child previously so adjudicated but record sealed pursuant to D.C. Code §16-2335, proceedings may be suspended and child released under prescribed conditions for 6 months, unless sooner terminated by social services or extended by court order for an additional 6 months maximum

consent decree entered if child represented by counsel, informed of consequences of decree, and neither child nor corporation counsel objects


Child violates condition(s) of decree or new petition filed against child
Corporation counsel consults with social services
Original petition not reinstated
Original petition reinstated (in discretion of corporation counsel)
Child processed under original petition as if consent decree never entered

best copy available

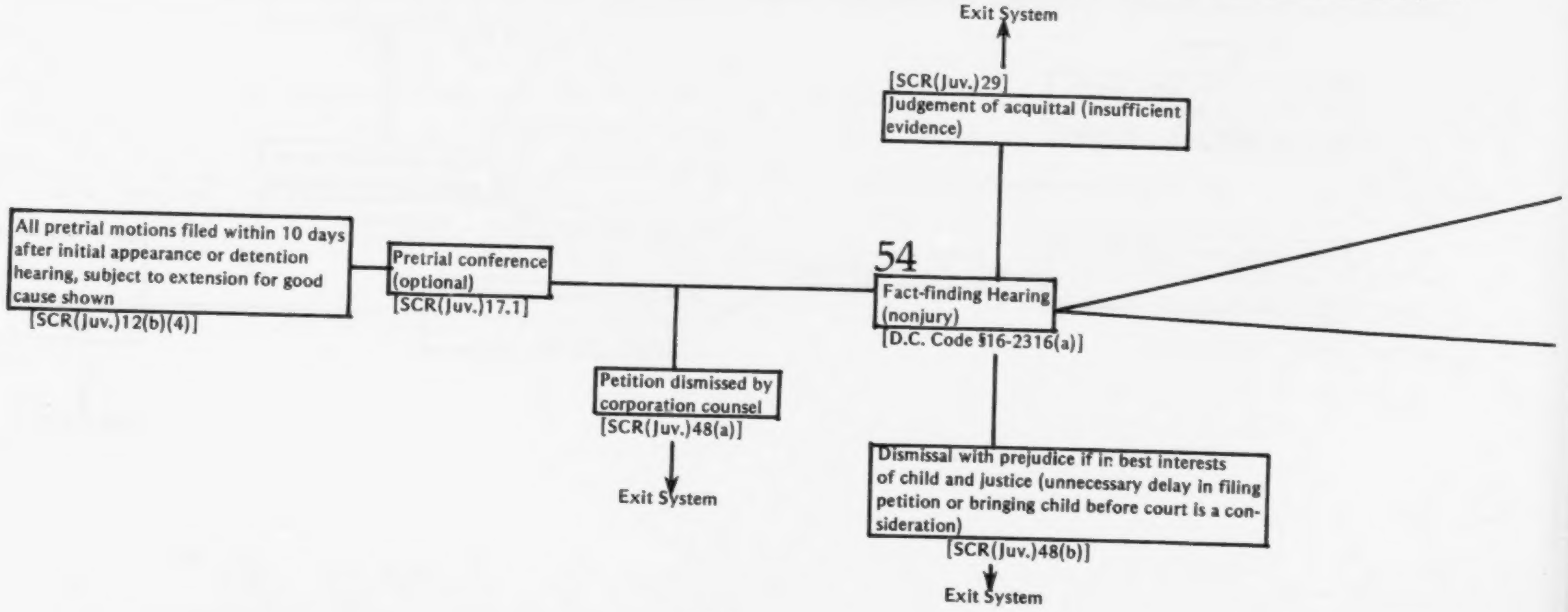
53. Unless the child has violated a condition of the consent decree, Social Services usually will not seek an extension of the decree.


Exit System
Child discharged by social services before 6 months from time decree entered (original petition dismissed)
Social services applies for extension of decree before expiration of 6 month period
53
Notice and Hearing
No extension granted
Decree expires in 6 months (original petition dismissed)
Exit System
Family division orders extension of decree for no more than 6 additional months
Expiration of extension period (original petition dismissed)
Exit System

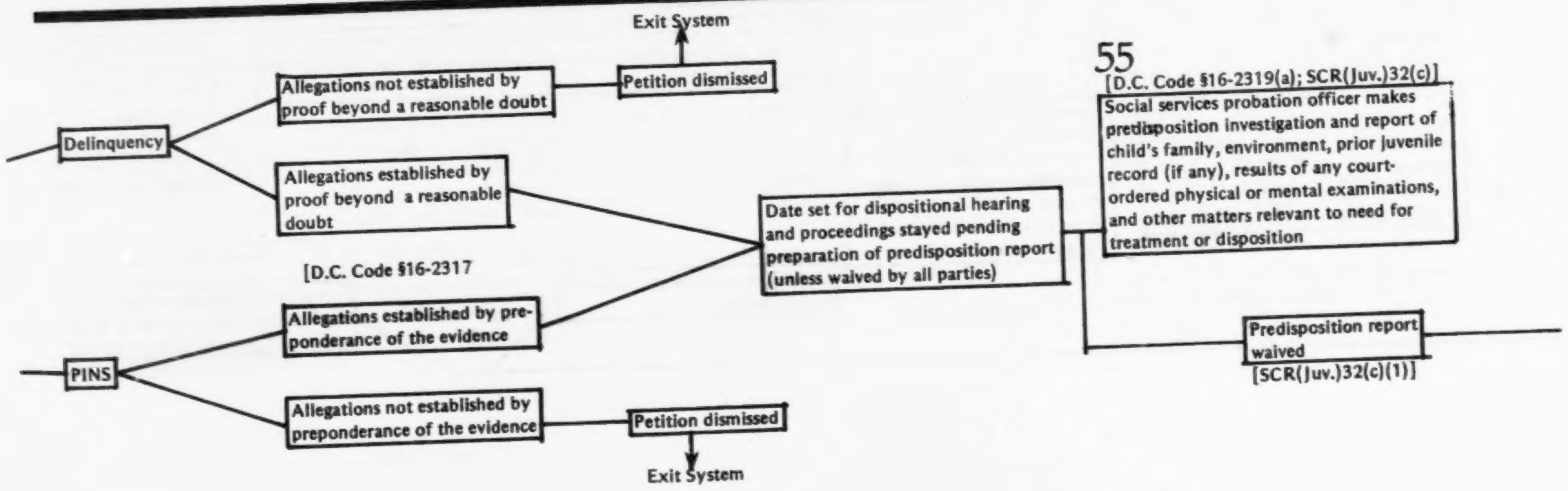
54. A factfinding hearing usually is held anywhere from 4-8 weeks after the initial hearing.

IJA-ABA Juvenile Standards

Standard 7.10A (Interim Status) provides for a factfinding hearing within 15 days of arrest or petitioning (whichever occurs first) in detention cases, and within 30 days in community cases, subject to extension under 7.10C-D.
Standard 4.1A (Adjudication) provides for a jury trial if requested by the child. Standard 4.1B (Adjudication) further states that the jury may consist of as few as six persons and the verdict must be unanimous.

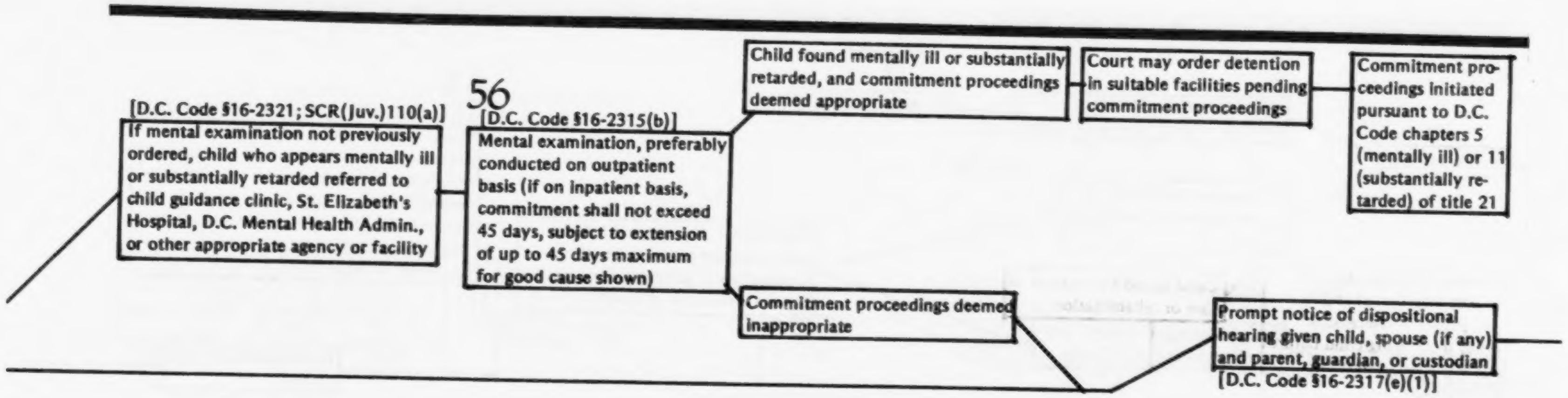

Exit System
[SCR(Juv.)29]
Judgement of acquittal (insufficient evidence)
All pretrial motions filed within 10 days after initial appearance or detention hearing, subject to extension for good cause shown
[SCR(Juv.)12(b)(4)]
Pretrial conference (optional)
[SCR(Juv.)17.1]
54
Fact-finding Hearing (nonjury)
[D.C. Code §16-2316(a)]
Petition dismissed by corporation counsel
[SCR(Juv.)48(a)]
Exit System
Dismissal with prejudice if in best interests of child and justice (unnecessary delay in filing petition or bringing child before court is a consideration)
[SCR(Juv.)48(b)]
Exit System

55. This "social study" is conducted by a probation officer assigned the diagnostic function. See note 15 supra. Recommendations are made to the court regarding specific plans for treatment.


Exit System
Petition dismissed
Allegations not established by proof beyond a reasonable doubt
Delinquency
Allegations established by proof beyond a reasonable doubt
[D.C. Code §16-2317
Allegations established by preponderance of the evidence
PINS
Allegations not established by preponderance of the evidence
Petition dismissed
Exit System
Date set for dispositional hearing and proceedings stayed pending preparation of predisposition report (unless waived by all parties)
55
[D.C. Code §16-2319(a); SCR(Juv.)32(c)]
Social services probation officer makes predisposition investigation and report of child's family, environment, prior juvenile record (if any), results of any court-ordered physical or mental examinations, and other matters relevant to need for treatment or disposition
Predisposition report waived
[SCR(Juv.)32(c)(1)]

56. If the child is detained pending disposition, he or she will be examined on an inpatient basis, and such an examination usually lasts from 40-60 days. See note 47 supra.

It should be noted that SCR(Juv.) 110(b) applies only to inpatient examinations conducted prior to the factfinding hearing. Thus, a hearing is not required for inpatient examinations conducted after the factfinding, but before the dispositional hearing. Probation officers may request an examination at this stage in the system to aid them in completing their predisposition investigation and report (social study).

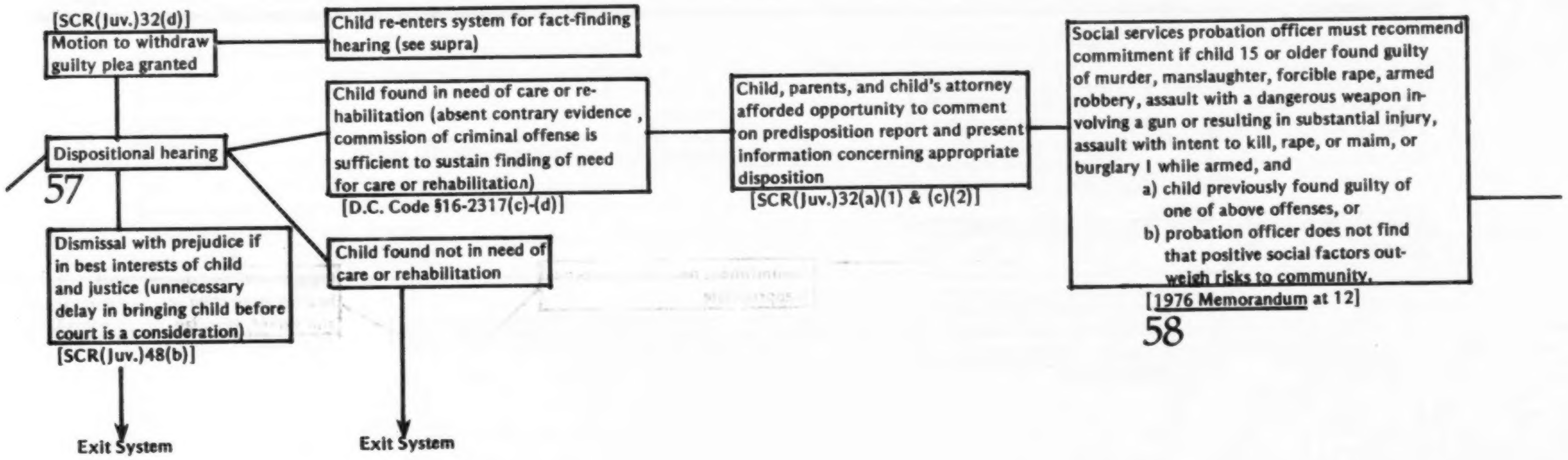

[D.C. Code §16-2321; SCR(Juv.)110(a)]
If mental examination not previously ordered, child who appears mentally ill or substantially retarded referred to child guidance clinic, St. Elizabeth's Hospital, D.C. Mental Health Admin., or other appropriate agency or facility
56
[D.C. Code §16-2315(b)]
Mental examination, preferably conducted on outpatient basis (if on inpatient basis, commitment shall not exceed 45 days, subject to extension of up to 45 days maximum for good cause shown)
Child found mentally ill or substantially retarded, and commitment proceedings deemed appropriate
Court may order detention in suitable facilities pending commitment proceedings
Commitment proceedings initiated pursuant to D.C. Code chapters 5 (mentally ill) or 11 (substantially retarded) of title 21
Commitment proceedings deemed inappropriate
Prompt notice of dispositional hearing given child, spouse (if any) and parent, guardian, or custodian
[D.C. Code §16-2317(e)(1)]

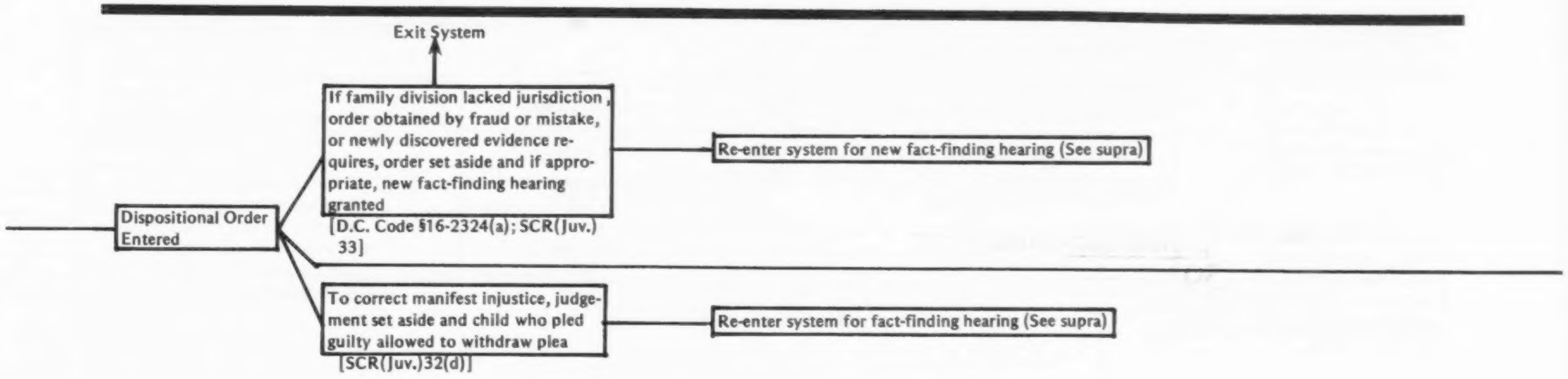
57. The dispositional hearing is usually held within 5-6 weeks after the factfinding hearing.

IJA-ABA Juvenile Standards

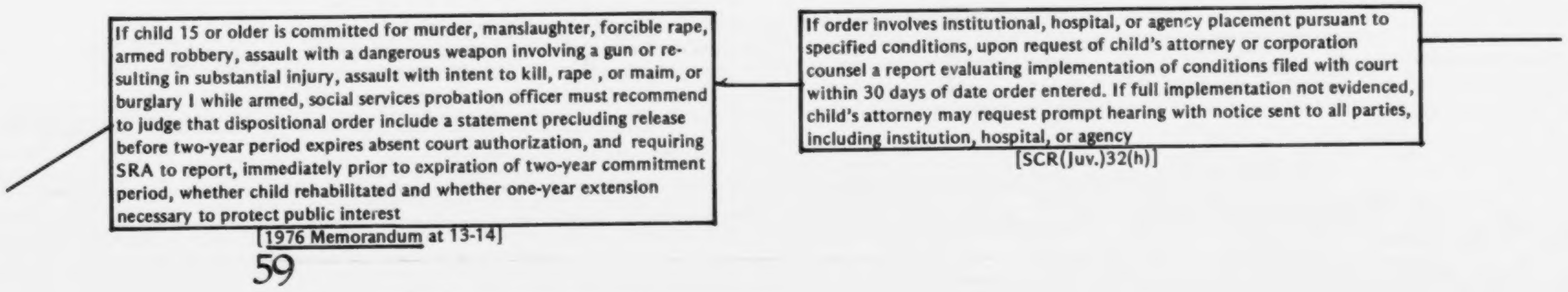
Standard 7.10B (Interim Status) states that a dispositional order should be implemented within 15 days of adjudication in detention cases, and within 30 days in community cases, subject to extension under 7.10C-D.

58. Recommendations for commitment of children falling within this category were mandated by a Superior Court memorandum issued by then Chief Judge Harold Greene. Memorandum to the Judges, D.C. Superior Court (December 21, 1976) at 12. The procedures initiated by this memorandum, however, have fallen into disuse. See note 32 supra.


[SCR(Juv.)32(d)]
Motion to withdraw guilty plea granted
Child re-enters system for fact-finding hearing (see supra)
Dispositional hearing
57
Child found in need of care or rehabilitation (absent contrary evidence, commission of criminal offense is sufficient to sustain finding of need for care or rehabilitation)
[D.C. Code §16-2317(c)-(d)]
Dismissal with prejudice if in best interests of child and justice (unnecessary delay in bringing child before court is a consideration)
[SCR(Juv.)48(b)]
Child found not in need of care or rehabilitation
Exit System
Exit System
Child, parents, and child's attorney afforded opportunity to comment on predisposition report and present information concerning appropriate disposition
[SCR(Juv.)32(a)(1) & (c)(2)]
Social services probation officer must recommend commitment if child 15 or older found guilty of murder, manslaughter, forcible rape, armed robbery, assault with a dangerous weapon involving a gun or resulting in substantial injury, assault with intent to kill, rape, or maim, or burglary I while armed, and
a) child previously found guilty of one of above offenses, or
b) probation officer does not find that positive social factors outweigh risks to community.
[1976 Memorandum at 12]
58


Exit System
If family division lacked jurisdiction, order obtained by fraud or mistake, or newly discovered evidence requires, order set aside and if appropriate, new fact-finding hearing granted
[D.C. Code §16-2324(a); SCR(Juv.) 33]
Re-enter system for new fact-finding hearing (See supra)
Dispositional Order Entered
To correct manifest injustice, judgement set aside and child who pled guilty allowed to withdraw plea
[SCR(Juv.)32(d)]
Re-enter system for fact-finding hearing (See supra)

59. See Memorandum To The Judges, D.C. Superior Court (December 21, 1976) at 13-14, and notes 32 and 58 supra.



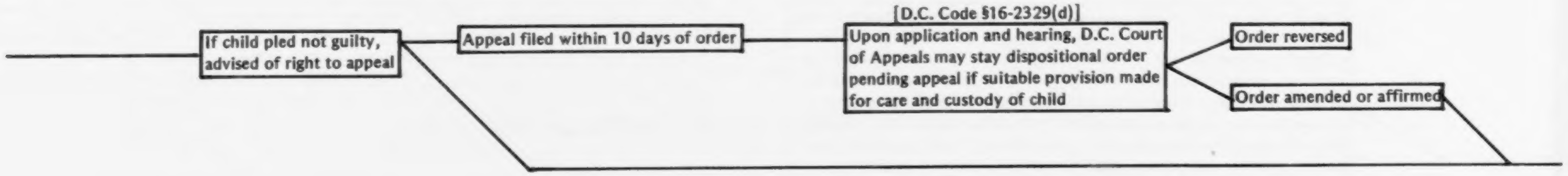
If child 15 or older is committed for murder, manslaughter, forcible rape, armed robbery, assault with a dangerous weapon involving a gun or resulting in substantial injury, assault with intent to kill, rape , or maim, or burglary I while armed, social services probation officer must recommend to judge that dispositional order include a statement precluding release before two-year period expires absent court authorization, and requiring SRA to report, immediately prior to expiration of two-year commitment period, whether child rehabilitated and whether one-year extension necessary to protect public interest

[1976 Memorandum at 13-14]

59

If order involves institutional, hospital, or agency placement pursuant to specified conditions, upon request of child's attorney or corporation counsel a report evaluating implementation of conditions filed with court within 30 days of date order entered. If full implementation not evidenced, child's attorney may request prompt hearing with notice sent to all parties, including institution, hospital, or agency

[SCR(Juv.)32(h)]


[D.C. Code §16-2329(d)]
If child pled not guilty, advised of right to appeal
Appeal filed within 10 days of order
Upon application and hearing, D.C. Court of Appeals may stay dispositional order pending appeal if suitable provision made for care and custody of child
Order reversed
Order amended or affirmed

60. Often, the probation order will provide for a review at a specified future date of the probationer's progress and the extent of his or her compliance with the prescribed conditions.

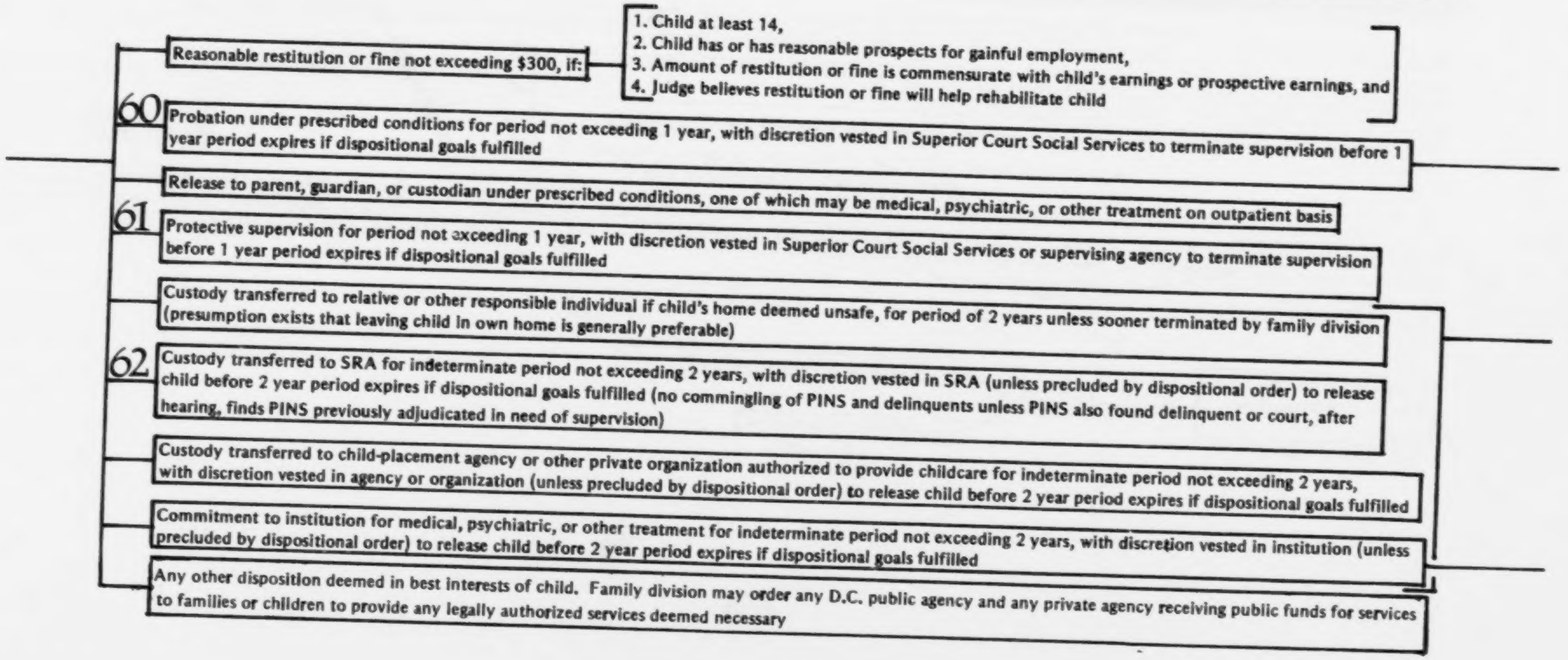
61. This disposition pertains to neglected children and PINS only, and involves placement in a shelter care facility.

62. The child is committed to SRA and placed in either community-based shelter houses or the Children's Center in Laurel, Maryland (Cedar Knoll and Oak Hill). On occasion, a child adjudicated delinquent or PINS is sent to the RHC. See note 43 supra.

Sometimes a judge will place a child on "suspended commitment," a disposition similar to probation (like probation, the child is supervised by a Social Services--not SRA--probation officer). Presumably, in order to comport with due process requirements, if the child acquires a new charge or violates a condition of his or her suspended commitment, he or she cannot be committed without first having an SCR(Juv.) 32(f) hearing or Morrissey-type dual-hearing. See note 46 infra and accompanying chart.

Problems with this disposition arise because authority for its imposition exists in neither the D.C. Code nor Superior Court Juvenile Rules. On occasion, a judge will treat suspended commitment as substitute for commitment rather than an equivalent of probation, and thus will in effect attempt to place the child on two years' probation (commitment is for a period not exceeding two

[D.C. Code §§16-2320, 16-2322]



Reasonable restitution or fine not exceeding $300, if:

1. Child at least 14,
2. Child has or has reasonable prospects for gainful employment,
3. Amount of restitution or fine is commensurate with child's earnings or prospective earnings, and
4. Judge believes restitution or fine will help rehabilitate child

Probation under prescribed conditions for period not exceeding 1 year, with discretion vested in Superior Court Social Services to terminate supervision before 1 year period expires if dispositional goals fulfilled

Release to parent, guardian, or custodian under prescribed conditions, one of which may be medical, psychiatric, or other treatment on outpatient basis

Protective supervision for period not exceeding 1 year, with discretion vested in Superior Court Social Services or supervising agency to terminate supervision before 1 year period expires if dispositional goals fulfilled

Custody transferred to relative or other responsible individual if child's home deemed unsafe, for period of 2 years unless sooner terminated by family division (presumption exists that leaving child in own home is generally preferable)

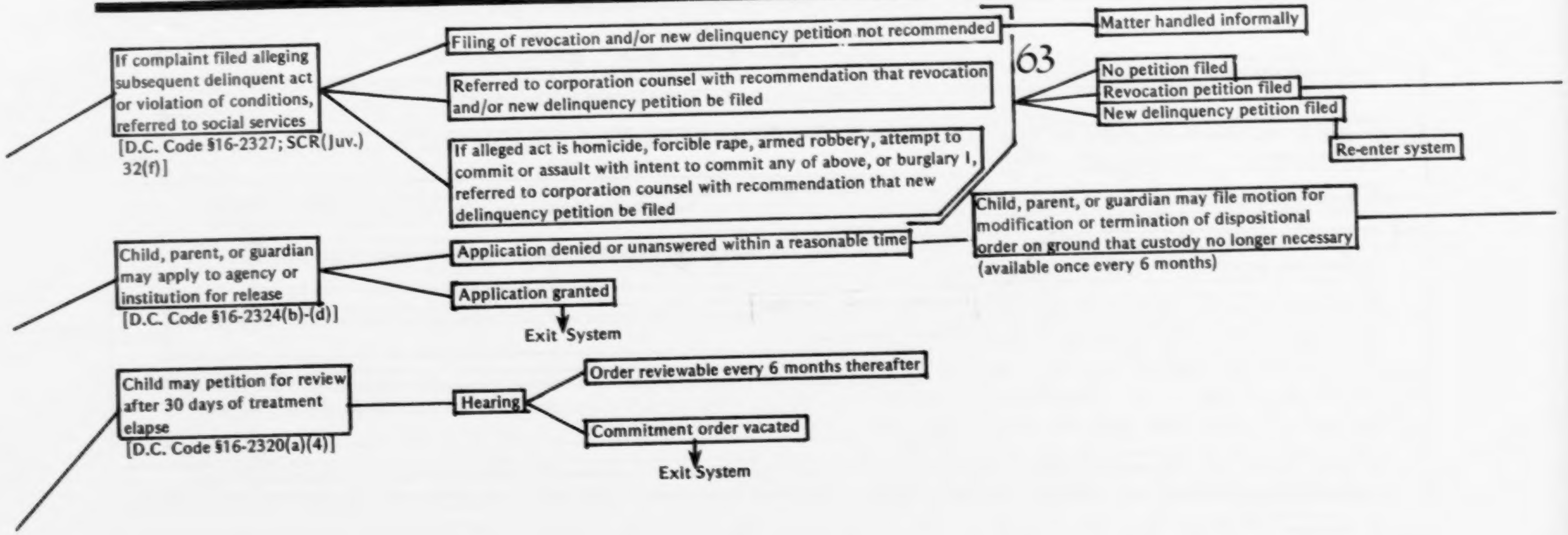
Custody transferred to SRA for indeterminate period not exceeding 2 years, with discretion vested in SRA (unless precluded by dispositional order) to release child before 2 year period expires if dispositional goals fulfilled (no commingling of PINS and delinquents unless PINS also found delinquent or court, after hearing, finds PINS previously adjudicated in need of supervision)

Custody transferred to child-placement agency or other private organization authorized to provide childcare for indeterminate period not exceeding 2 years, with discretion vested in agency or organization (unless precluded by dispositional order) to release child before 2 year period expires if dispositional goals fulfilled

Commitment to institution for medical, psychiatric, or other treatment for indeterminate period not exceeding 2 years, with discretion vested in institution (unless precluded by dispositional order) to release child before 2 year period expires if dispositional goals fulfilled

Any other disposition deemed in best interests of child. Family division may order any D.C. public agency and any private agency receiving public funds for services to families or children to provide any legally authorized services deemed necessary years, while probation is for a period not exceeding one year). The validity of this procedure is questionable. However, the child's attorney might hesitate to challenge a judge's authority to initially impose the disposition, for the judge might accede and impose commitment instead.

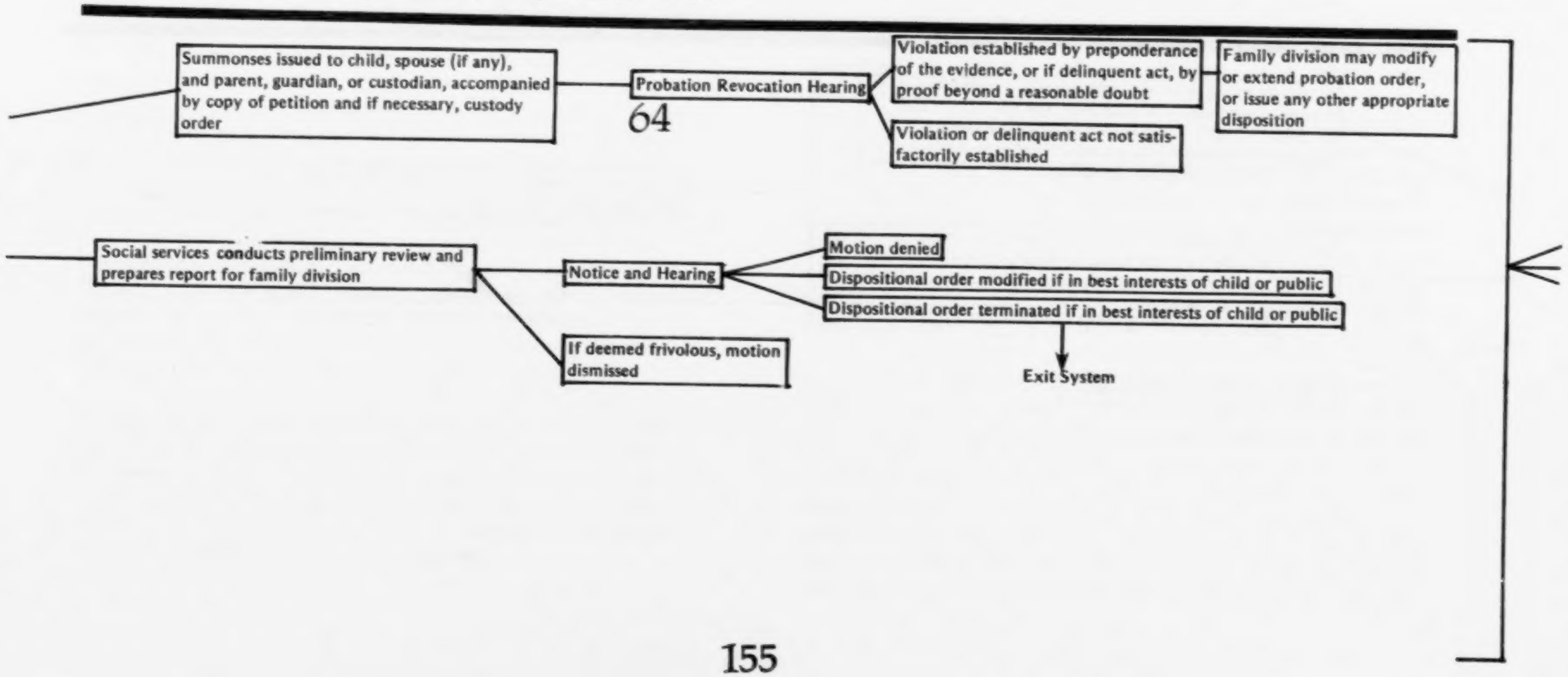
63. The D.C. Court of Appeals has held that SCR (Juv.) 32(f)(1) does not preclude Corporation Counsel from filing a revocation petition even though Social Services (who is responsible for supervision of probations) does not recommend that one be filed. In re B.P., 397 A.2d 974, 975 (1979) (aff'd an unreported D.C. App. order dated November 9, 1978).

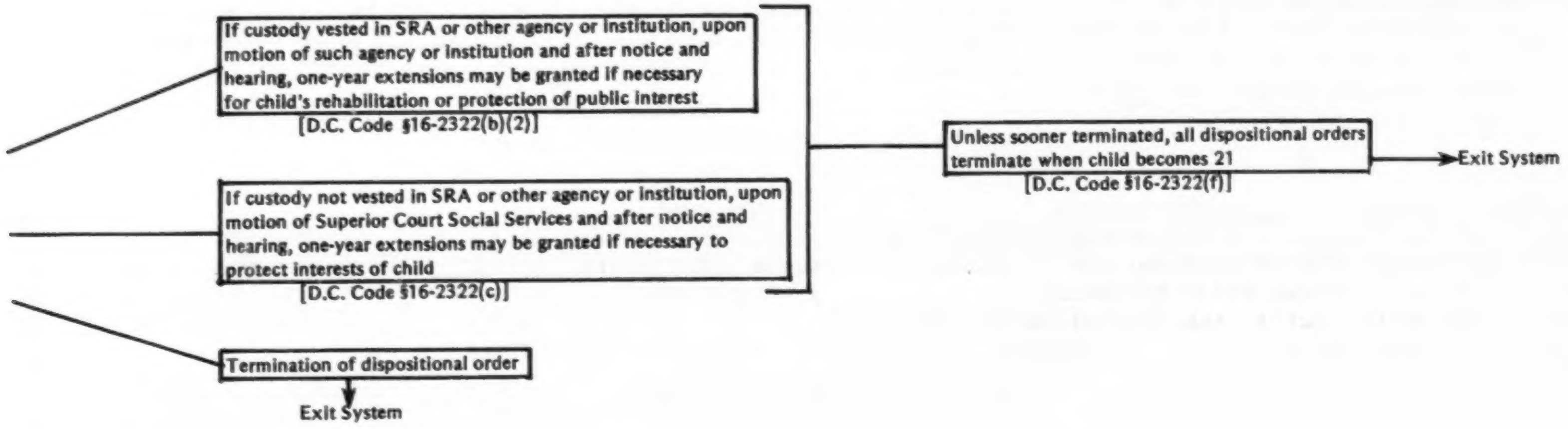

If complaint filed alleging subsequent delinquent act or violation of conditions, referred to social services
[D.C. Code §16-2327; SCR(Juv.) 32(f)]
Filing of revocation and/or new delinquency petition not recommended
Referred to corporation counsel with recommendation that revocation and/or new delinquency petition be filed
If alleged act is homicide, forcible rape, armed robbery, attempt to commit or assault with intent to commit any of above, or burglary I, referred to corporation counsel with recommendation that new delinquency petition be filed
63
Matter handled informally
No petition filed
Revocation petition filed
New delinquency petition filed
Re-enter system
Child, parent, or guardian may apply to agency or institution for release
[D.C. Code §16-2324(b)-(d)]
Application denied or unanswered within a reasonable time
Application granted
Exit System
Child, parent, or guardian may file motion for modification or termination of dispositional order on ground that custody no longer necessary
(available once every 6 months)
Child may petition for review after 30 days of treatment elapse
[D.C. Code §16-2320(a)(4)]
Hearing
Order reviewable every 6 months thereafter
Commitment order vacated
Exit System

64. If the child is deemed dangerous to the community, frequently a two-hearing procedure is followed. This procedure was established in Morrissey v. Brewer, 408 U.S. 471 (1971) (parole revocation), made applicable to adult probation revocation proceedings in Gagnon v. Scarpelli, 411 U.S. 778 (1973), construed in United States v. Peters, 103 Wash. L. Rptr. 2217 (1975), and suggested for application in juvenile probation revocation proceedings in In re A.W., 353 A.2d 686 (1976) (Nebeker, J., concurring).

The first hearing ("Peters One") is an initial probable cause hearing analogous to a pretrial detention hearing. See In re B.P., 397 A.2d 974, 976 (1979) (aff'd an unreported D.C. App. order dated November 9, 1978). Thus, if probable cause is found the child may be detained pending the final revocation, and the detention order is subject to reconsideration and/or appeal. See D.C. Code sec. 16-2312(f), 16-2328: SCR(Juv.) 107(c).

The second hearing ("Peters Two") is the actual revocation hearing, a full-blow adversarial hearing analogous to the single revocation hearing contemplated by D.C. Code sec. 16-2327 and SCR(Juv.) 32(f)(3). See In re A. W., 353 A.2d 686, 691 (1976) (Nebeker, J., concurring and incorporating part of United States v. Peters, 103 Wash. L. Rptr. 2217 (1975) in an appendix to the opinion).


Summonses issued to child, spouse (if any), and parent, guardian, or custodian, accompanied by copy of petition and if necessary, custody order
Probation Revocation Hearing
64
Violation established by preponderance of the evidence, or if delinquent act, by proof beyond a reasonable doubt
Violation or delinquent act not satisfactorily established
Family division may modify or extend probation order, or issue any other appropriate disposition
Social services conducts preliminary review and prepares report for family division
Notice and Hearing
Motion denied
Dispositional order modified if in best interests of child or public
Dispositional order terminated if in best interests of child or public
Exit System
If deemed frivolous, motion dismissed


If custody vested in SRA or other agency or institution, upon motion of such agency or institution and after notice and hearing, one-year extensions may be granted if necessary for child's rehabilitation or protection of public interest
[D.C. Code §16-2322(b)(2)]
If custody not vested in SRA or other agency or institution, upon motion of Superior Court Social Services and after notice and hearing, one-year extensions may be granted if necessary to protect interests of child
[D.C. Code §16-2322(c)]
Termination of dispositional order
Exit System
Unless sooner terminated, all dispositional orders terminate when child becomes 21
[D.C. Code §16-2322(f)]
Exit System

Recommendations

1. The Superior Court Social Services Division should be given nonappealable authority to no-petition any PINS complaint alleging an offense which if committed by an adult would be misdemeanor. If Social Services finds that a case should be petitioned, Corporation Counsel should retain final discretion to no-petition the case. If a complaint alleges an offense which would constitute a felony if committed by an adult, Corporation Counsel should consider the recommendation of Social Services prior to making its decision, but should retain the discretion to petition if deemed appropriate.

The present "quasi-appeal" system in which the only input of Social Services consists of making recommendations has proven ineffectual in practice, largely due to Corporation Counsel's propensity to arrogate to itself absolute prosecutorial control within the system.

2. There should exist a presumption against petitioning and in favor of nonjudicial diversion programs. In accordance with this presumption, whenever Social Services recommends petitioning, it should justify this recommendation by filling out the Closing Summary currently required for no-petitioning recommendations. To require Social Services to fill out a Closing Summary when it recommends no-petitioning, but not when it recommends petitioning, directly undermines the above presumption.

3. Social Services should be given five days to make its petitioning decision (to no-petition a PINS or misdemeanor complaint) or recommendation (to no-petition a felony complaint or petition any complaint), and in all felonies and PINS or misdemeanors where Social Services recommends petitioning, Corporation Counsel should be given two days from the date it receives such recommendation to make its petitioning decision. These

time frames should apply to detention cases as well as community cases. By requiring that a petitioning decision be made on the day of the detention hearing (absent a five-day postponement for good cause shown), the system creates the appearance that the rights of a detained child are being especially safeguarded. In practice, however, such a requirement runs counter to the child's best interest because such time constraints make an informed petitioning decision impracticable. The result is overpetitioning: Social Services routinely recommends petitioning in detention cases and Corporation Counsel initially petitions an extremely high percentage of the complaints it receives. Without more advanced information systems providing quicker access to home, school, job, psychological, and social data, any expectation to the contrary is sheer fantasy.

4. If Social Services is not given more time in which to make its petitioning decision or recommendation, the intake workers at the RHC should be given the authority (and additional training, if necessary) to make petitioning decisions or recommendations, for those children who are detained at the RHC, in order to reduce the burden on those probation officers located at the court. If the police bring a child to the RHC close to the time when children are transported to court in the morning (approximately 6:10 a.m.), and the intake worker has insufficient time to make an informed petitioning decision or recommendation, such decision or recommendation should be left to the staff located at the court.

5. The Social Services probation officers located at the court should made a detention/release decision in every case where the child has not been previously released, based upon the criteria listed in SCR(Juv.) 106. In making this decision, a probation officer should consider the strong presumption in favor of release. At present, this presumption is ignored by most participants in the system. If the probation officer finds release inappropriate, at the detention hearing--which should be renamed "release hearing" to reflect the presumption in favor of release-he or she should be called upon by the judge to state specifically 1) upon which SCR(Juv.) 106 criteria and supporting factors the decision not to release was based, 2) the information and sources thereof probative of the pertinent criteria and supporting factors, and 3) reasons why such sources should be deemed reliable.

If the probation officer decides the child should be placed in community status, the child should still be arraigned the same day, but this should be done at an initial appearance, rather than a detention hearing.

6. In making its detention/release and petitioning decisions, Social Services should have access to a detailed police of the circumstances surrounding the alleged offense (i.e., PD 202A).

7. Any attempts to "convert" a community case to a detention case should not be permitted absent a custody order.

8. Children taken into custody pursuant to a custody order should be treated like any other detention case, with Social Services retaining authority to release the child if the criteria in SCR(Juv.) 106 so require.

9. In SCR(Juv.) 106, the factors listed under a particular criterion should be deemed probative only of that criterion unless separately listed under another criterion. A judge should not be

permitted to base his or her decision to detain a child upon a "general sense impression" by paying lip service to the aforegoing criteria and applicable factors.

10. After the initial release hearing, additional release hearings at which all parties are present (including the original probation officer) should be automatically held every seven days until disposition or release, whichever occurs sooner. At each hearing, the probation officer should be required to account for his or her recommendation under the criteria listed in SCR(Juv.) 106.

11. Every 60 days each Family Division judge, Assistant Corporation Counsel, and probation officer should be required to visit all SRA facilities, secure and nonsecure. During these visits, which should be unannounced, the visitor should encourage comments from children detained at the facility regarding the conditions at the facility as well as the treatment by the counselors at the facility.

12. When a child in abscondence from an SRA facility is picked up and brought into court, the judge should attempt to elicit from the child any reasons for his or her abscondence, which might be related to the conditions or treatment at the particular facility from which the child absconded.

13. No child brought to court should be placed in a cell unless he or she is physically uncontrollable. Such placement reflects *and fosters* a dehumanizing absence of respect and dignity, which inexcusably undermines the concepts of *parens patriae*, least restrictive alternative, and presumption of innocence. A guarded room with seats and perhaps a few magazines to read (or pamphlets describing the juvenile justice system) seems more in accordance with the above concepts.

14. Whenever a judge determines that a mental evaluation of the child may be necessary, he or she should order that the child be brought before a Mental Health Screening Team. This team should be located at the court and should consist of at least one psychologist and one psychiatrist, preferably a child psychiatrist. Within 24 hours, the team should complete a written diagnostic formulation of the child's mental health. Based on this formulation, the child should either be: 1) returned to his or her prior status (released or detained) if no need for further evaluation is indicated; 2) ordered to undergo an outpatient psychological or psychiatric examination, whichever is indicated. If an inpatient examination is ordered, the team should be required to explain in writing why an adequate examination could not be conducted on an outpatient basis.

All examinations should be ordered for no longer than a period of 45 days, and extensions of up to an additional 45 days maximum should be ordered only upon a showing of good cause *made by the individual psychologist or psychiatrist in charge of the child's examination*. Absent such a showing, the child should be immediately remanded to the status he or she possessed prior to the examination (released or detained).

15. The use of "suspended commitment" to circumvent the one-year limitation on probation should not be permitted. Additionally, revocation of this disposition should be preceded by a full revocation hearing equivalent to a SCR(Juv.) 32(f) or *Morrissey*-type procedure.

16. All recommendations concerning the conduct of Superior Court Social Services staff are intended to be equally applicable to SRA liaison workers where the child is already an SRA ward.

★U.S. GOVERNMENT PRINTING OFFICE: 1980— 311-379:1424

U.S. Department of Justice
Law Enforcement Assistance Administration
Office of Juvenile Justice and Delinquency Prevention

Postage and Fees Paid
U.S. Department of Justice
Jus 431

SPECIAL FOURTH-CLASS
RATE BOOK

---

633 Indiana Avenue, NW
Washington, D.C. 20531

Official Business
Penalty for Private Use $300